ADMONITION NO. 14-01

CLASSIFICATION:

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

SUMMARY:

The respondent was the executor of the estate of a client and a co-trustee of a trust established as part of the client's estate plan. First the client and then his wife were the original beneficiaries, with their five adult children as ultimate beneficiaries.

The respondent believed all stocks and bonds of the client had been identified and transferred into the trust during the client's lifetime. The client predeceased his wife. Following the death of the client's wife in 2007, additional stocks were discovered by the children that were in the possession of the unclaimed property division of the Commonwealth. The respondent failed to promptly take the steps necessary to recover this property for the benefit of the client's estate. In 2010, the beneficiaries retained counsel to assist them in this matter. The respondent subsequently recovered the assets and there was no loss as a result of the delay. The respondent reimbursed the estate the amount paid by the beneficiaries to new counsel. The respondent also delayed in filing the accountings for the client's estate; however all assets were administered by the trust pursuant to a pour-over provision in the will and there was no harm to the beneficiaries as a result.

The respondent's failure to promptly recover the unclaimed assets for the benefit of the estate and failure to promptly file the estate accountings constituted neglect and failure to act diligently in violation of Mass. R. Prof. C. 1.3.

The respondent has been a member of the Massachusetts bar since 1976 and has received no prior discipline. He received an admonition for his conduct.

ADMONITION NO. 14-02

CLASSIFICATION:

Conflict with Former Client in Substantially Related Matter [Mass. R. Prof. C. 1.9(a)]

SUMMARY:

In 2002, the respondent was retained on a *pro bono* basis to represent a group of residents and an environmental nonprofit group in their joint opposition to a developer's plan to construct a 280-unit apartment building. In 2005, a settlement was reached among the residents, the nonprofit, and the developer. The respondent was involved in drafting the 2005 settlement agreement, which authorized construction of the building but required the developer to make certain improvements to the site.

In 2006, the conservation commission rejected some of the improvements, thereby derailing implementation of the settlement. In response, the respondent, on behalf of the nonprofit and with the support of the residents, filed a *certiorari* action in superior court, seeking to annul the commission's decision. Shortly thereafter, he withdrew as counsel to the nonprofit and the residents.

In late 2007, without the respondent's involvement, the nonprofit and the developer negotiated a "restated" version of the 2005 settlement agreement. Before it could become effective, the restated agreement needed the approval of the residents. When the respondent learned of the possibility of a restated settlement agreement, he informed the nonprofit (his now-former client) that he was once again the "attorney of record" for the residents. He also arranged for two of the residents to bring a civil action against the developer in superior court seeking, among other things, specific performance of the 2005 agreement. This relief would have undermined the modifications the nonprofit sought in the restated agreement. The respondent did not obtain the nonprofit's informed consent to his representation of the two residents.

The superior court remanded the matter to the commission and ordered it to hold public hearings. Both the nonprofit and the two residents concluded that they did not want the commission to specifically enforce all of the terms of the 2005 agreement. At the commission hearing, the respondent advocated for specific

enforcement of the 2005 agreement. After the commission rendered its decision -- a favorable outcome for both the nonprofit and the two residents -- the former clients requested in writing that the respondent cease his course of action. The respondent refused and, contrary to his interests and requests of the former clients, filed an administrative appeal of the commission's decision. The former clients filed a motion in superior court requesting that the respondent be disqualified from further representing any interests adverse to them in matters substantially related to the apartment building. The respondent opposed this motion. After hearing, the superior court disqualified the respondent. He appealed, although eventually he dropped his appeal.

The respondent's conduct in representing clients in a matter adverse to former clients when the two matters were substantially related and without his former clients' consent violated Mass. R. Prof. C. 1.9(a).

The respondent has no disciplinary history. After he received an admonition for the misconduct described above, he requested an expedited hearing under BBO rule 2.12; following that, an admonition was recommended by a special hearing officer and approved by the Board.

ADMONITION NO. 14-03

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. 1.2a]

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

SUMMARY:

In February 2010, a client who had been terminated from his position as a municipal employee in Massachusetts, engaged the respondent to represent him seeking reinstatement to his position and income lost as a result of his transfer to a less remunerative position. The client was a member of a union, and his position was subject to a collective bargaining agreement (Agreement). The client had been "bumped" from his position by another employee who claimed more seniority, a claim that the client disputed.

The Union denied the client's request for representation, maintaining that the client's "bump" was authorized by the terms of the Agreement and that the seniority issue had been resolved by a 1998 grievance decision that concluded that certain types of part-time services, such as those at issue in this matter, would not count towards seniority. The client then filed his own grievance with the City, which was denied.

At this point, the client retained the respondent. The deadline for filing charges of prohibited practices with the Massachusetts Department of Labor Relations (DLR) was June 17, 2010, six months from the date of the notice of termination.

As a tactical matter, the respondent hoped to proceed in federal as opposed to state court on behalf of his client, due to the political position and perceived influence of the employee who had "bumped" into the client's original position. However, the respondent failed to adequately research the laws and procedures for bringing prohibited action charges against the City and Union. On June 16, 2010, the

respondent filed a civil complaint in U.S. District Court, asserting claims against the City and the Union under the National Labor Relations Act, which does not apply to employees of states and municipalities. The City and the Union each filed motions to dismiss the federal claim based on lack of jurisdiction. After hearing arguments, the Court issued an order from the bench, granting the motions to dismiss.

Although aware of the six-month deadline for filing claims at the DLR, the respondent did not preserve his client's rights to proceed at the DLR by simultaneously filing timely prohibited action charges against the City and Union at the DLR. The respondent discussed with his client the decision to file the case in federal court. However, he did not fully consult with the client about the decision not to simultaneously file state charges, and obtain the client's consent after consultation to missing the deadline for filing at the DLR.

On September 2, 2010, the respondent filed charges on behalf of his client at the DLR against the City and Union. Both the City and the Union filed responses with the DLR requesting that the charges be dismissed as not timely filed. After an in-person investigation conference, the DLR issued a decision dated January 28, 2011, allowing the charges against the Union to go forward, citing actions that had taken place after the termination of the client's original position. On January 28, 2011, the DLR dismissed the charges against the City both as untimely and on the merits. The dismissal order notified the charging party that an appeal could be filed within ten days of receipt of the order pursuant to the governing state regulations.

The respondent met with the client on February 27, 2011, to review the two decisions received from the DLR. The respondent failed to fully explain to the client the consequences of not appealing the dismissal of charges against the City, including that the DLR could only order the City, not the Union, to reinstate the client to his original position, and then only if the client prevailed against the City. Based on his misunderstanding of the ramifications of his decision, the client instructed the respondent not to appeal the dismissal of the charges against the City and to proceed only with the pending claim against the Union.

Shortly thereafter, but after the ten-day limit for filing an appeal had expired, the client engaged successor counsel to represent him, and terminated the respondent's representation. Successor counsel attempted unsuccessfully to obtain permission from the DLR to file the appeal late. Ultimately, the client voluntarily dismissed the charges against the Union.

By failing to conduct sufficient and necessary research into the client's claims and avenues for relief and by failing to handle the matter with the knowledge, skill, thoroughness, and preparation reasonably necessary for the representation, the respondent violated Mass. R. Prof. C. 1.1.

By failing to file a timely complaint on his client's behalf against the City with the DLR, the respondent failed to seek the lawful objectives of his client through reasonably available means permitted by law, in violation of Mass. R. Prof. C. 1.2(a).

By failing to adequately explain to the client the consequences of not filing a timely claim at the DLR, and that the dismissal of the complaint against the City prevented the client from being reinstated to his original position, the respondent violated Mass. R. Prof. C. 1.4(b).

The respondent was admitted to practice in 1981 and has no prior discipline. In mitigation, he fully refunded the fees the client had paid him. The client's chances of success, even had the claim been properly processed, were at best problematic. The respondent accordingly received an admonition for his conduct.

ADMONITION NO. 14-04

CLASSIFICATIONS:

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

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

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

SUMMARY:

In December 2011, a client retained the respondent for an uncontested divorce. The respondent and the client signed an hourly fee agreement in which the respondent agreed to bill for his services at $200 per hour. The client gave the respondent an advance fee payment of $1,400, which the respondent deposited to his IOLTA account.

Between December 2011 and March 2012, the respondent prepared draft pleadings and a separation agreement for the divorce. The respondent withdrew $750 and $650 from his IOLTA account in February and April 2012, respectively, after earning those amounts for work on the case. The respondent did not send any invoices or other notice of the fee withdrawals to the client upon the withdrawals.

By April 2012, the client and his wife had signed the separation agreement, and it was time to institute a divorce proceeding on the client's behalf. Thereafter, however, the respondent failed to file the pleadings or take other action of substance in the case. Between about April and August 2012, the respondent failed to return the client's calls or reply to written requests for status updates. In August 2012, the client hired new counsel and discharged the respondent, who promptly gave the client's file to the new lawyer.

The respondent's failure to give the client, on or before the date of each fee withdrawal, an itemized bill or other accounting showing the services rendered,

written notice of amount and date of the withdrawal, and a statement of the balance of the client's funds in the trust account violated Mass. R. Prof. C. 1.15(d)(2). The respondent's failure timely to pursue the divorce violated Mass. R. Prof. C. 1.3. His failure to reply promptly to the client's inquiries violated Mass. R. Prof. C. 1.4(a).

The respondent had no history of discipline. In mitigation, the respondent suffered from severe depression resulting from serious personal and family problems for which he obtained treatment. The respondent received an admonition for his misconduct.

ADMONITION NO. 14-05

CLASSIFICATIONS:

Failing to Communicate Adequately with Client [Mass. R. Prof. C. 1.4]
Withdrawal without Protecting Client [Mass. R. Prof C. 1.16(d)]
Conduct Prejudicial to the Administration of Justice [Mass. R. Prof. C. 8.4(d)]

SUMMARY:

In 2009, a client hired the respondent to represent him in an investigation by the Department of Public Health Division of Health Professions Licensure (DPH). In December 2010, DPH referred the matter for formal prosecution. In 2011, the respondent and the client had a heated argument concerning the representation. The respondent believed that he could no longer effectively communicate with the client, and failed thereafter to respond to the client's requests for information. The respondent, however, did not withdraw from the representation.

In April 2012, the DPH scheduled a pre-trial hearing in the matter to occur in May 2012. The respondent failed to advise his client of the pre-trial hearing. The respondent also, without notifying his client, filed a notice of withdrawal. Neither the respondent nor the client appeared at the pre-trial hearing, and the client was defaulted. The client hired successor counsel, and was allowed to remove the default after he demonstrated that the respondent had failed to notify him of the pre-trial hearing and had failed to respond to his requests for information.

By failing to respond to his client's requests for information, and by failing to notify his client of the pre-trial hearing date and of his intent to withdraw, the respondent violated Mass. R. Prof. C. 1.4(a) and (b). By withdrawing without notice to the client, the respondent violated Mass. R. Prof. C. 1.16(d) and 8.4(d).

The respondent was admitted to practice in Massachusetts in 2004. He has no prior history of discipline. In mitigation, when the misconduct occurred, the respondent was experiencing stress related to the transition of his practice from a firm to a sole practitioner. He received an admonition for his misconduct in this matter, conditioned upon obtaining a law office management evaluation.

ADMONITION NO. 14-06

CLASSIFICATIONS:

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

SUMARY:

In October 2009, the respondent, a bar advocate, was appointed successor counsel for a client facing charges of assault and battery, criminal harassment, and witness intimidation pending in district court.

At the time of the respondent's appointment, the client had been *pro se* for two weeks and had previously had several court-appointed lawyers, all of whom had been permitted to withdraw. The respondent's immediate predecessor had accompanied the client to a court-ordered competency evaluation conducted by the court clinician. Despite the fact that the court had ordered the court clinician to conduct a competency evaluation, there was no corresponding docket entry indicating that the court had ordered the evaluation.

Following the evaluation, the respondent's predecessor had asked the clinician for her conclusion concerning the client's competency, but the clinician had declined to comment until she could talk to the client's primary care physician. Predecessor counsel later withdrew and gave the file to the client, who was *pro se* immediately following predecessor counsel's withdrawal. The file included predecessor counsel's email exchange with the client about getting a copy of the clinician's competency report when it was ready.

Once the respondent was appointed, he and predecessor counsel spoke on the telephone and at the courthouse about the case. They discussed several aspects of the case, including the competency evaluation. Predecessor counsel told the respondent that a competency evaluation had been conducted and that he did not know whether the evaluation had been completed or a written report prepared.

The respondent also spoke with the court clinician who had conducted the evaluation. Although the respondent did not specifically ask the clinician if she had prepared a report, he came away from the conversation assuming that she had not. The client repeatedly asked the respondent to obtain a copy of the report, but the respondent dismissed his requests, because the respondent did not believe that the client was incompetent and he did not believe that the evaluation had resulted in a formal report. He therefore took no steps to obtain the report.

In fact, the court clinician did prepare a report in which she concluded that there was reason to question the client's competency and recommended further evaluation on an in-patient basis. The report was filed in the court clinician's office and was not provided to the court or docketed. The respondent did not learn of the report before trial and no competency hearing was held or determination of competency made before trial.

The respondent represented the client at trial four months later. The client was found guilty of two of the charges and placed on probation. A notice of appeal was filed, and appellate counsel filed a motion for production of the court clinic report. Upon receipt of the report, appellate counsel filed a motion for a new trial, which was allowed. The court found that the respondent had been ineffective for failing to request a competency hearing, that the court had been unaware of the evaluation, and that there existed a substantial question concerning the client's competency at the time of trial. The client has since been reevaluated, determined to be competent to stand trial, and placed on pre-trial probation.

In mitigation, the respondent fully cooperated with successor appellate counsel by providing an affidavit to be used in support of the client's motion for a new trial.

The respondent's failure to act diligently and his failure to communicate adequately with his client by failing to obtain a copy of the clinician's report was in violation of Mass. R. Prof. C. 1.3 and Mass. R. Prof. C. 1.4. The respondent received an admonition for his conduct.

ADMONITION NO. 14-07

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)]

SUMMARY:

The respondent was admitted to the Massachusetts Bar in 2005. Following her admission and up until the fall of 2011, the respondent worked at various law firms in the Boston area.

By the end of 2011, the respondent was unemployed. She also was suffering from an undiagnosed case of severe depression, and experiencing significant personal problems as a result. Among other things, the respondent had stopped opening her mail, which included correspondence from the Board of Bar Overseers (the "Board") regarding her upcoming registration renewal. She therefore failed to re-register as required and, in March of 2012, was administratively suspended. The respondent was not aware of her administrative suspension until October of 2012.

In October of 2012, the respondent accepted a position as an attorney at a law firm. During the hiring process, she was alerted to her administrative suspension. She assured her new employer that she would resolve this issue but, and as a result of her depression, failed to follow through to get reinstated. She continued to work at the firm for two months and, during this time frame, was therefore engaged in the unauthorized practice of law. At the end of the two months, the respondent was terminated by the firm.

In April of 2013, the respondent went to a clinical psychologist for an evaluation and was diagnosed with chronic and severe depression. The respondent began taking antidepressant medication and underwent intensive therapy. Shortly afterwards, she contacted the Board and filed a request for reinstatement, along with a payment for her outstanding bar dues and a full disclosure of the nature of her legal employment in the fall of 2012.

The respondent's unauthorized practice of law after her administrative suspension violated Mass. R. Prof C. 5.5(a) and 8.4(d). However, the period of unauthorized practice of law was brief and in mitigation, at all relevant times, the respondent was suffering from chronic and severe depression.

The respondent had no prior disciplinary history. She received an admonition for the foregoing misconduct.

ADMONITION NO. 14-08

CLASSIFICATION:

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

SUMMARY:

The respondent was retained by a named executor to represent the executor in probating an estate in August of 2007. By October of 2007, the respondent took steps necessary to have the permanent executor appointed. The estate consisted of a mobile home, a pick-up truck and two bank accounts totaling approximately $170,000. According to the will, a specific bequest of one of the bank accounts (containing $110,000) was made to a church and the remainder of the estate was bequeathed to the decedent's nephew.

During their initial conversations, the respondent advised the executor of his responsibilities to the estate. In November of 2007, the respondent sent an inventory form to the executor and requested it be completed, signed and returned. The inventory form was not returned to the respondent as requested. Through an oversight, the matter was not calendared by the respondent or his staff, as a result of which the respondent failed to perform any further work on the matter for two years. During this time, the executor did not contact the respondent.

In late 2009, counsel for the residuary beneficiary contacted the respondent about the administration of the estate. The respondent promptly contacted the executor and resumed work on the estate. The respondent discovered that the executor had not transferred the bank account to the church and had not sold the mobile home, although it had been on the market. The executor had used substantial estate funds to maintain the mobile home and repair it after significant flood damage. The executor and his wife had also been using the truck.

The respondent tried to obtain information necessary to settle the estate from the executor throughout 2010, but the executor was uncooperative. By 2010, the church named as a beneficiary also retained counsel. In March of 2011, a petition was filed by the residuary beneficiary requesting an order requiring the executor to render an inventory. The order was allowed by the court but the executor failed to comply. In April of 2011, the respondent attempted to withdraw from the case due to failure of the executor to communicate with the respondent and a breakdown in the attorney/client relationship, but the motion was denied. In July of 2011, the beneficiaries filed a Joint Motion to Remove Fiduciary and a successor executor was appointed. In August of 2011, the respondent filed another motion to withdraw, which was allowed. In April of 2012, the parties reached a

settlement, which was approved by the court. Pursuant to the settlement, the executor made the church whole, the remaining assets were transferred to the residuary beneficiary and the executor paid the attorneys' fees of the church and the residuary beneficiary.

The respondent's failure to take any action to complete the administration of the estate for two years violated Mass. R. Prof. C. 1.3.

The respondent has been admitted to the Massachusetts bar since 1985 and has received no prior discipline. He received an admonition for his conduct conditioned upon attending a continuing legal education program designated by bar counsel.

ADMONITION NO. 14-09

CLASSIFICATIONS:

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

Failing to Act Diligently [Mass. R. Prof. C. 1.3]
Failing to Communicate Adequately with Client [Mass. R. Prof. C. 1.4(a) and (b)]
Withdrawal without Protecting Client [Mass. R. Prof C. 1.16(d)]
Conduct Prejudicial to the Administration of Justice [Mass. R. Prof. C. 8.4(d)

SUMMARY:

In June 2011, a couple hired the respondent to file a bankruptcy petition on their behalf. The respondent charged a flat fee for his services, which the couple paid. For the next year, the respondent worked on the matter periodically, but failed to file the petition. In July 2012, the couple tried to reach the respondent and learned that his office was closed and his telephone was no longer in service. The couple subsequently relocated and filed their bankruptcy petition in another state.

The couple filed a request for investigation against the respondent with the Office of Bar Counsel. The respondent contacted the couple and entered into a settlement agreement, which he put in writing and requested they sign. The agreement provided for a full refund of the respondent's legal fee. Further, the agreement provided, in consideration of the refund, the couple would withdraw their disciplinary complaint against the respondent. The couple signed the agreement and the respondent refunded his fee in full.

By failing to file the bankruptcy petition, the respondent violated Mass. R. Prof. C. 1.2(a) and 1.3. By failing to notify his clients that he was closing his office and would not be filing the petition, the respondent violated Mass. R. Prof. C. 1.4(a) and (b). By failing to promptly return his unearned fee, the respondent violated Mass. R. Prof. C. 1.16(d). By making the withdrawal of the disciplinary complaint a condition of the settlement, the respondent violated S.J.C. Rule 4:01 §10 and Mass. R. Prof. C. 8.4(d).

The respondent was admitted to the bar in Massachusetts in 2004. He has no history of discipline. In mitigation, the respondent was distracted by his responsibility to his family as the primary caregiver for his wife, who was seriously ill and bedridden, as well as the primary caregiver for his two young children and an elderly friend. He accordingly received an admonition for his misconduct.

ADMONITION NO. 14-10

CLASSIFICATION:

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

SUMMARY:

The respondent represented clients in a civil action in Lowell District Court when they were sued by a Maryland resident with whom they had done business at their Lowell-area restaurant. While the case was pending in Lowell, the plaintiff filed suit against the defendants in a district court in Montgomery County, Maryland, alleging the same facts and damages. When the defendants contacted the respondent and informed him of the Maryland suit, he explained to them that they would need to retain counsel in Maryland and that he was not licensed there.

Under pressure to resolve cases before leaving his firm, the respondent then mailed to the Maryland court a Motion to Dismiss. On the correspondence and the motion, the respondent listed his office address in Massachusetts and did not purport to have a license number or office address in Maryland. Despite the fact that there was no indication on the filing that the respondent was licensed in Maryland, the clerk's office docketed the motion and the Court ultimately acted on it without hearing.

By knowingly filing a pleading in Maryland while not licensed to practice in that jurisdiction, the respondent violated Mass. R. Prof. C. 5.5(a).

The respondent has been a member of the Massachusetts bar since 2010 and has received no prior discipline. He received an admonition for his conduct.

ADMONITION NO. 14-11

CLASSIFICATIONS:

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

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

SUMMARY:

The respondent represented a husband in an acrimonious divorce proceeding in which child custody was a contested issue. In 2009, the court appointed a Guardian Ad Litem to consider a variety of issues prior to the trial. On October 8, 2009, the respondent received a copy of the GAL report from the probate court. On that same date, the respondent faxed a copy of the GAL report to the husband, in violation of Standing Order 2-08 which provides for the impoundment of GAL reports and prohibited the respondent from providing a copy to the client except upon the allowance of a motion. The respondent did not intentionally violate the standing order but did not appreciate that it prohibited her from providing a copy of the report to her client.

The husband subsequently remarried. In late 2011, his second wife filed a Harassment Prevention Order (HPO) action against the ex-wife and provided a copy of the GAL report to the judge to review. The report was not entered into evidence and was returned to the second wife by the judge, who granted the HPO. In an order denying a motion to vacate, the judge indicated that he relied upon the second wife's affidavit and testimony and not the GAL report in granting the HPO. The respondent subsequently obtained the copy of the report in the husband's possession and returned it to the probate court on March 13, 2012.

The respondent's conduct in failing to understand the terms of the standing order and in faxing the GAL report to the client in violation of the standing order violated Mass. R. Prof. C. 1.1 and 8.4(d).

The respondent was admitted to practice in Massachusetts in 1993 and has no prior discipline. The respondent received an admonition for this misconduct.

ADMONITION NO. 14-12

CLASSIFICATION:

Improper Business Transaction with Client [Mass. R. Prof. C. 1.8(a)]

SUMMARY:

In 2012, the respondent agreed to represent a client in a criminal matter pending in superior court and in a post-divorce complaint for modification and contempt pending in probate and family court. The respondent advised the client that he would defend the criminal matter for a flat fee of $50,000 plus expenses and that he would charge an hourly rate of $350 to defend the domestic matter. Because the client was incarcerated and unable to pay the flat fee in the criminal case or a retainer in the domestic matter, the respondent and the client agreed that the client would sign a promissory note and mortgage deed on property owned by the client out of state.

The respondent and a notary public visited the client in jail and had him sign the promissory note and mortgage deed on the same day. The notary witnessed the client's signature on the mortgage deed. Before entering into the business transaction with the client, the respondent did not advise the client to seek independent legal counsel and did not afford him a reasonable opportunity to do so. The client subsequently claimed not to have understood certain of the provisions of the mortgage.

The respondent's conduct in entering into a business transaction with a client without affording the client a reasonable opportunity to seek advice from independent legal counsel was in violation of Mass. R. Prof. C. 1.8(a). In mitigation, the respondent has discharged the mortgage.

The respondent was admitted to practice in 1978. He received an admonition for his misconduct.

ADMONITION NO. 14-13

CLASSIFICATIONS:

Failing to Act Diligently [Mass. R. Prof. C. 1.3]
Failing to Communicate Adequately with Client [Mass. R. Prof. C. 1.4(a) and (b)]

SUMMARY:

In October 2004, the respondent was retained to commence suit on behalf of a client against a former business partner. The client and his former partner had operated a real estate development business under oral agreements from 1988 until approximately 1999. The respondent filed suit in October 2004, filed an amended complaint in November 2004, and timely answered a counterclaim in March 2005.

In 2005, the respondent served requests for production of documents on the defendant and received responses, and in 2006, the defendant filed requests for production of documents, but the respondent did not respond. In 2007 and 2008, the respondent filed four assented-to motions to continue the pretrial conference, which was ultimately held in April 2008, and trial was scheduled for December 2008. After several continuances of the trial date, due to the efforts of the parties to settle the case, a date of March 22, 2010 was set.

Over the course of the proceedings, the lawyers and the parties met at least three times to discuss settlement, as well as mediation. The respondent and opposing counsel ultimately reported to the court prior to the trial date that they intended to arbitrate the matter. On March 15, 2010, the court issued an order for entry of dismissal *nisi* and ordered the parties to file an agreement for judgment or stipulation of dismissal by September 15, 2010.

The respondent and opposing counsel then took no further action. The respondent did not advise the client that the matter had been taken off the trial list, he did not pursue the mediation, and he did not notify the court of the status of the matter or file a motion to restore the case to the trial list by September 15, 2010. On September 27, 2010, the court issued a judgment of dismissal for failure to comply with the *nisi* order.

The client emailed the respondent in April and May 2011 requesting an update and asking that the respondent either pursue arbitration or set a trial date. The respondent replied to the second email that he would contact the client to discuss the next step, but he never did. Later in 2011, the client went to the court and discovered that the case had been dismissed.

The respondent, who was admitted to practice in 1973, received a private admonition in 1992 for neglect of a legal matter. *Private Reprimand No. PR 92-3*, 8 Mass. Att'y Disc. R. 272 (1992). In the current case, he lost track of the matter due in part to a busy trial schedule at the time. However, the complexity of the case, the number of parcels of land involved, and the oral nature of the agreements made it unlikely that either side could prevail, and the potential costs of litigation or mediation were high relative to the potential value of the case.

The respondent's conduct in failing to prosecute the case or pursue settlement or mediation was in violation of Mass. R. Prof. C. 1.3. The respondent's failure to keep the client reasonably informed about the status of the case or to explain the matter to the client so as to permit the client to make informed decisions was in violation of Mass. R. Prof. C. 1.4 (a) and (b). In mitigation, the respondent did not ever bill the client for his services.

The respondent received an admonition for his misconduct, conditioned upon having the Law Office Management Assistance Program (LOMAP) inspect and audit his law office practices and procedures.

ADMONITION NO. 14-14

CLASSIFICATION:

Obtaining Evidence in Violation of Legal Rights of Third Person [Mass. R. Prof. C. 4.4]

SUMMARY:

In February 2011, the respondent agreed to represent a client in a divorce. On March 7, 2011, the respondent filed a complaint for divorce on behalf of her client. The husband was represented by counsel. During the following year, the respondent became frustrated by the husband's delays in responding to discovery.

On March 2, 2012, husband was terminated from his position with his employer. He called his wife and informed her of the termination and that he planned to appeal it. He also told her that his employer would send a letter regarding the termination to the marital home, in which she resided.

A few days later, a letter arrived at the marital home addressed to husband from the husband's employer. The wife called the respondent to tell her that the letter had come. The respondent understood that the wife routinely opened mail that came to the marital home in the name of the husband. The respondent was also mindful that a pre-trial hearing was scheduled for March 20, 2012.

The respondent told her client that she could open the letter and instructed her to make a copy of it. The respondent was aware that she could gain access to the letter through discovery, but wanted a copy of the letter before the pre-trial date. By letter dated March 15, 2012, the respondent informed husband's counsel that her client had opened the correspondence and enclosed a copy of the termination letter.

The respondent's conduct of instructing her client to open the letter and make a copy of it as a way to circumvent the discovery process violated Mass. R. Prof. C. 4.4.

On January 16, 2013, the parties entered into a separation agreement, and a judgment of divorce nisi issued on January 23, 2013. No ultimate harm resulted from the respondent's actions. The respondent was admitted to the bar in 1992 and has no history of discipline. She accordingly received an admonition for her misconduct.

ADMONITION NO. 14-15

CLASSIFICATIONS:

Trust Account Commingling [Mass. R. Prof. C. 1.15(b)(2)]
Improper Method of Withdrawal [Mass. R. Prof. C. 1.15(e)(3)]

SUMMARY:

During a period of time from January 1, 2011 through April 30, 2014, the respondent failed to hold trust funds separate from personal or business funds and made multiple cash withdrawals from his IOLTA account. Specifically, in addition to the deposit and disbursement of client funds, the respondent kept excess personal funds in his IOLTA account. The respondent then withdrew these personal funds via cash withdrawals.

The respondent's conduct in maintaining excess personal funds in his IOLTA account and in withdrawing cash from an IOLTA account violated Mass. R. Prof. C. 1.15(b)(2) and (e)(3).

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

ADMONITION NO. 14-16

CLASSIFICATION:

Knowingly Disobeying Rules of Tribunal [Mass. R. Prof. C. 3.4(c)]

SUMMARY:

In 2008, the respondent was retained to represent a client as replacement counsel in an ongoing litigation concerning the client's purchase of a gas station. The fee agreement provided for a flat fee to be paid in increments, but an hourly fee if the representation was terminated before it concluded. The respondent accordingly filed his appearance in the litigation. He also reviewed the voluminous case files and communicated with opposing counsel. However, shortly thereafter, certain disagreements arose between the respondent and the client about the appropriate legal strategy in the case. As a result of those disagreements, the client terminated the respondent as his lawyer. At that point, the respondent had been paid $7,000 in legal fees.

Following his termination, the respondent returned the case files to the client. He also submitted a final bill claiming an additional $2,887.50 in legal fees on an hourly basis for services rendered. The client refused to pay and filed a demand for fee arbitration with the Boston Bar Association ("BBA").

An arbitration at the BBA followed. It resulted in a decision requiring the respondent to provide a refund of approximately $1,400 to the client, with payment due within 15 days. Notice of the award was sent to the respondent but he did not receive it and did not make any effort to check or to determine the outcome.

Four years later, the respondent was contacted by a lawyer for the client about the unpaid arbitration award. The respondent asked for additional time to make payment on the grounds that he was experiencing financial problems.

When no payment was forthcoming, the client decided to and did file a small claims action against the respondent. The respondent failed to appear at the trial and a default judgment was entered against him. The respondent was served with the judgment but made no payments.

The client subsequently filed a request for investigation with the Office of Bar Counsel. During the investigation that followed, the respondent provided the client with the refund called for by the BBA arbitration award.

By knowingly disobeying the arbitration award even after he was contacted by successor counsel and the small-claims judgment, the respondent violated Mass. R. Prof. C. 3.4(c).

The respondent, who was admitted in 2001 and has no prior discipline, received an admonition for his misconduct.

ADMONITION NO. 14-17

CLASSIFICATION:

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

SUMMARY:

The respondent consulted with a client about possible representation in criminal and civil matters. The respondent's duty of confidentiality to the prospective client arose as soon as he agreed to consider representing the client.

Some weeks later, the client called the respondent and made a threat of imminent harm to public employees. The respondent reported the threats to the police. The divulgence of the client's threats fell within Mass. R. Prof. C. 1.6 (b)(1), which allows an attorney to reveal confidential client information to prevent the commission of a criminal act that the lawyer reasonably believes is likely to result in death or substantial bodily injury.

When the situation became public, reporters contacted the respondent. The respondent shared confidential information with the reporters concerning the client's threats. No harm resulted. The respondent's divulgence, without consent, of confidential information to the reporters, violated Mass. R. Prof. C. 1.6(a), but resulted in no harm.

The respondent received an admonition for the misconduct, conditioned on attendance at a CLE program designated by bar counsel.

ADMONITION NO. 14-18

CLASSIFICATIONS:

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

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

Failure to Safeguard Client Property other than Funds [Mass. R. Prof. C. 1.15(b)(3)]

SUMMARY:

The respondent is a sole practitioner specializing in domestic relations law. In August 2012, the respondent agreed to represent a client in her divorce. In March 2013, the parties signed a separation agreement and the court entered a judgment nisi of divorce. After the divorce became final in May 2013, the respondent agreed to prepare and seek approval of two qualified domestic relations orders (QDROs), as set forth in the parties' separation agreement. On November 29, 2013, the respondent filed with the Probate and Family Court an assented-to motion to approve the two QDROs that he had prepared. The Court approved the QDROs, and mailed the signed orders to the respondent. The respondent received the original signed QDROs by early December 2013.

After receiving the original QDROs from the court, the respondent failed to promptly send the approved QDROs to the retirement plan administrators and misplaced the orders. Between the end of November 2013 and May 1, 2014, the respondent failed to reply to multiple telephone calls and emails from his client requesting information about the status of the QDROs. When he could not find the missing orders, the respondent did not undertake to have the court issue replacement orders.

On April 2, 2014, the client filed a request for investigation with bar counsel. After receiving notice of bar counsel's investigation, the respondent searched his office and found the misplaced original orders. On May 1, 2014, the respondent mailed the QDROs to the retirement plans, and wrote to the client to apologize for his lack of communication and his delay in processing the QDROs. By the end of June 2014, the retirement plan administrators confirmed that the two QDROs had been received, accepted and administered. The delay in providing the approved QDROs to the plan administrators did not result in any financial harm to the client, because the orders related back to the time of the divorce. The respondent did not charge a legal fee for his services in seeking approval of the two QDROs.

The respondent's failure to promptly send the approved QDROs to the plan administrators to secure their implementation violated Mass. R. Prof. C. 1.3 (obligation to act with reasonable diligence and promptness in representing a client). The respondent's failure to respond to telephone calls and emails from his client requesting information about the status of the matter for over four months violated Mass. R. Prof. C. 1.4(a) (obligation to promptly comply with reasonable requests for information from a client). The respondent's temporary loss of the orders violated Mass. R. Prof. C. 1.15(b)(3) (obligation to safeguard a client's property).

The respondent, who was admitted to practice in 1977 and had no prior discipline, received an admonition for his conduct. As a condition of the admonition, the respondent agreed to contact the Law Office Management Program (LOMAP) and obtain an assessment of his law office management practices.

ADMONITION NO. 14-01

CLASSIFICATION:

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

SUMMARY:

The respondent was the executor of the estate of a client and a co-trustee of a trust established as part of the client's estate plan. First the client and then his wife were the original beneficiaries, with their five adult children as ultimate beneficiaries.

The respondent believed all stocks and bonds of the client had been identified and transferred into the trust during the client's lifetime. The client predeceased his wife. Following the death of the client's wife in 2007, additional stocks were discovered by the children that were in the possession of the unclaimed property division of the Commonwealth. The respondent failed to promptly take the steps necessary to recover this property for the benefit of the client's estate. In 2010, the beneficiaries retained counsel to assist them in this matter. The respondent subsequently recovered the assets and there was no loss as a result of the delay. The respondent reimbursed the estate the amount paid by the beneficiaries to new counsel. The respondent also delayed in filing the accountings for the client's estate; however all assets were administered by the trust pursuant to a pour-over provision in the will and there was no harm to the beneficiaries as a result.

The respondent's failure to promptly recover the unclaimed assets for the benefit of the estate and failure to promptly file the estate accountings constituted neglect and failure to act diligently in violation of Mass. R. Prof. C. 1.3.

The respondent has been a member of the Massachusetts bar since 1976 and has received no prior discipline. He received an admonition for his conduct.

ADMONITION NO. 14-02

CLASSIFICATION:

Conflict with Former Client in Substantially Related Matter [Mass. R. Prof. C. 1.9(a)]

SUMMARY:

In 2002, the respondent was retained on a *pro bono* basis to represent a group of residents and an environmental nonprofit group in their joint opposition to a developer's plan to construct a 280-unit apartment building. In 2005, a settlement was reached among the residents, the nonprofit, and the developer. The respondent was involved in drafting the 2005 settlement agreement, which authorized construction of the building but required the developer to make certain improvements to the site.

In 2006, the conservation commission rejected some of the improvements, thereby derailing implementation of the settlement. In response, the respondent, on behalf of the nonprofit and with the support of the residents, filed a *certiorari* action in superior court, seeking to annul the commission's decision. Shortly thereafter, he withdrew as counsel to the nonprofit and the residents.

In late 2007, without the respondent's involvement, the nonprofit and the developer negotiated a "restated" version of the 2005 settlement agreement. Before it could become effective, the restated agreement needed the approval of the residents. When the respondent learned of the possibility of a restated settlement agreement, he informed the nonprofit (his now-former client) that he was once again the "attorney of record" for the residents. He also arranged for two of the residents to bring a civil action against the developer in superior court seeking, among other things, specific performance of the 2005 agreement. This relief would have undermined the modifications the nonprofit sought in the restated agreement. The respondent did not obtain the nonprofit's informed consent to his representation of the two residents.

The superior court remanded the matter to the commission and ordered it to hold public hearings. Both the nonprofit and the two residents concluded that they did not want the commission to specifically enforce all of the terms of the 2005 agreement. At the commission hearing, the respondent advocated for specific

enforcement of the 2005 agreement. After the commission rendered its decision -- a favorable outcome for both the nonprofit and the two residents -- the former clients requested in writing that the respondent cease his course of action. The respondent refused and, contrary to his interests and requests of the former clients, filed an administrative appeal of the commission's decision. The former clients filed a motion in superior court requesting that the respondent be disqualified from further representing any interests adverse to them in matters substantially related to the apartment building. The respondent opposed this motion. After hearing, the superior court disqualified the respondent. He appealed, although eventually he dropped his appeal.

The respondent's conduct in representing clients in a matter adverse to former clients when the two matters were substantially related and without his former clients' consent violated Mass. R. Prof. C. 1.9(a).

The respondent has no disciplinary history. After he received an admonition for the misconduct described above, he requested an expedited hearing under BBO rule 2.12; following that, an admonition was recommended by a special hearing officer and approved by the Board.

ADMONITION NO. 14-03

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. 1.2a]

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

SUMMARY:

In February 2010, a client who had been terminated from his position as a municipal employee in Massachusetts, engaged the respondent to represent him seeking reinstatement to his position and income lost as a result of his transfer to a less remunerative position. The client was a member of a union, and his position was subject to a collective bargaining agreement (Agreement). The client had been "bumped" from his position by another employee who claimed more seniority, a claim that the client disputed.

The Union denied the client's request for representation, maintaining that the client's "bump" was authorized by the terms of the Agreement and that the seniority issue had been resolved by a 1998 grievance decision that concluded that certain types of part-time services, such as those at issue in this matter, would not count towards seniority. The client then filed his own grievance with the City, which was denied.

At this point, the client retained the respondent. The deadline for filing charges of prohibited practices with the Massachusetts Department of Labor Relations (DLR) was June 17, 2010, six months from the date of the notice of termination.

As a tactical matter, the respondent hoped to proceed in federal as opposed to state court on behalf of his client, due to the political position and perceived influence of the employee who had "bumped" into the client's original position. However, the respondent failed to adequately research the laws and procedures for bringing prohibited action charges against the City and Union. On June 16, 2010, the

respondent filed a civil complaint in U.S. District Court, asserting claims against the City and the Union under the National Labor Relations Act, which does not apply to employees of states and municipalities. The City and the Union each filed motions to dismiss the federal claim based on lack of jurisdiction. After hearing arguments, the Court issued an order from the bench, granting the motions to dismiss.

Although aware of the six-month deadline for filing claims at the DLR, the respondent did not preserve his client's rights to proceed at the DLR by simultaneously filing timely prohibited action charges against the City and Union at the DLR. The respondent discussed with his client the decision to file the case in federal court. However, he did not fully consult with the client about the decision not to simultaneously file state charges, and obtain the client's consent after consultation to missing the deadline for filing at the DLR.

On September 2, 2010, the respondent filed charges on behalf of his client at the DLR against the City and Union. Both the City and the Union filed responses with the DLR requesting that the charges be dismissed as not timely filed. After an in-person investigation conference, the DLR issued a decision dated January 28, 2011, allowing the charges against the Union to go forward, citing actions that had taken place after the termination of the client's original position. On January 28, 2011, the DLR dismissed the charges against the City both as untimely and on the merits. The dismissal order notified the charging party that an appeal could be filed within ten days of receipt of the order pursuant to the governing state regulations.

The respondent met with the client on February 27, 2011, to review the two decisions received from the DLR. The respondent failed to fully explain to the client the consequences of not appealing the dismissal of charges against the City, including that the DLR could only order the City, not the Union, to reinstate the client to his original position, and then only if the client prevailed against the City. Based on his misunderstanding of the ramifications of his decision, the client instructed the respondent not to appeal the dismissal of the charges against the City and to proceed only with the pending claim against the Union.

Shortly thereafter, but after the ten-day limit for filing an appeal had expired, the client engaged successor counsel to represent him, and terminated the respondent's representation. Successor counsel attempted unsuccessfully to obtain permission from the DLR to file the appeal late. Ultimately, the client voluntarily dismissed the charges against the Union.

By failing to conduct sufficient and necessary research into the client's claims and avenues for relief and by failing to handle the matter with the knowledge, skill, thoroughness, and preparation reasonably necessary for the representation, the respondent violated Mass. R. Prof. C. 1.1.

By failing to file a timely complaint on his client's behalf against the City with the DLR, the respondent failed to seek the lawful objectives of his client through reasonably available means permitted by law, in violation of Mass. R. Prof. C. 1.2(a).

By failing to adequately explain to the client the consequences of not filing a timely claim at the DLR, and that the dismissal of the complaint against the City prevented the client from being reinstated to his original position, the respondent violated Mass. R. Prof. C. 1.4(b).

The respondent was admitted to practice in 1981 and has no prior discipline. In mitigation, he fully refunded the fees the client had paid him. The client's chances of success, even had the claim been properly processed, were at best problematic. The respondent accordingly received an admonition for his conduct.

ADMONITION NO. 14-04

CLASSIFICATIONS:

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

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

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

SUMMARY:

In December 2011, a client retained the respondent for an uncontested divorce. The respondent and the client signed an hourly fee agreement in which the respondent agreed to bill for his services at $200 per hour. The client gave the respondent an advance fee payment of $1,400, which the respondent deposited to his IOLTA account.

Between December 2011 and March 2012, the respondent prepared draft pleadings and a separation agreement for the divorce. The respondent withdrew $750 and $650 from his IOLTA account in February and April 2012, respectively, after earning those amounts for work on the case. The respondent did not send any invoices or other notice of the fee withdrawals to the client upon the withdrawals.

By April 2012, the client and his wife had signed the separation agreement, and it was time to institute a divorce proceeding on the client's behalf. Thereafter, however, the respondent failed to file the pleadings or take other action of substance in the case. Between about April and August 2012, the respondent failed to return the client's calls or reply to written requests for status updates. In August 2012, the client hired new counsel and discharged the respondent, who promptly gave the client's file to the new lawyer.

The respondent's failure to give the client, on or before the date of each fee withdrawal, an itemized bill or other accounting showing the services rendered,

written notice of amount and date of the withdrawal, and a statement of the balance of the client's funds in the trust account violated Mass. R. Prof. C. 1.15(d)(2). The respondent's failure timely to pursue the divorce violated Mass. R. Prof. C. 1.3. His failure to reply promptly to the client's inquiries violated Mass. R. Prof. C. 1.4(a).

The respondent had no history of discipline. In mitigation, the respondent suffered from severe depression resulting from serious personal and family problems for which he obtained treatment. The respondent received an admonition for his misconduct.

ADMONITION NO. 14-05

CLASSIFICATIONS:

Failing to Communicate Adequately with Client [Mass. R. Prof. C. 1.4]
Withdrawal without Protecting Client [Mass. R. Prof C. 1.16(d)]
Conduct Prejudicial to the Administration of Justice [Mass. R. Prof. C. 8.4(d)]

SUMMARY:

In 2009, a client hired the respondent to represent him in an investigation by the Department of Public Health Division of Health Professions Licensure (DPH). In December 2010, DPH referred the matter for formal prosecution. In 2011, the respondent and the client had a heated argument concerning the representation. The respondent believed that he could no longer effectively communicate with the client, and failed thereafter to respond to the client's requests for information. The respondent, however, did not withdraw from the representation.

In April 2012, the DPH scheduled a pre-trial hearing in the matter to occur in May 2012. The respondent failed to advise his client of the pre-trial hearing. The respondent also, without notifying his client, filed a notice of withdrawal. Neither the respondent nor the client appeared at the pre-trial hearing, and the client was defaulted. The client hired successor counsel, and was allowed to remove the default after he demonstrated that the respondent had failed to notify him of the pre-trial hearing and had failed to respond to his requests for information.

By failing to respond to his client's requests for information, and by failing to notify his client of the pre-trial hearing date and of his intent to withdraw, the respondent violated Mass. R. Prof. C. 1.4(a) and (b). By withdrawing without notice to the client, the respondent violated Mass. R. Prof. C. 1.16(d) and 8.4(d).

The respondent was admitted to practice in Massachusetts in 2004. He has no prior history of discipline. In mitigation, when the misconduct occurred, the respondent was experiencing stress related to the transition of his practice from a firm to a sole practitioner. He received an admonition for his misconduct in this matter, conditioned upon obtaining a law office management evaluation.

ADMONITION NO. 14-06

CLASSIFICATIONS:

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

SUMARY:

In October 2009, the respondent, a bar advocate, was appointed successor counsel for a client facing charges of assault and battery, criminal harassment, and witness intimidation pending in district court.

At the time of the respondent's appointment, the client had been *pro se* for two weeks and had previously had several court-appointed lawyers, all of whom had been permitted to withdraw. The respondent's immediate predecessor had accompanied the client to a court-ordered competency evaluation conducted by the court clinician. Despite the fact that the court had ordered the court clinician to conduct a competency evaluation, there was no corresponding docket entry indicating that the court had ordered the evaluation.

Following the evaluation, the respondent's predecessor had asked the clinician for her conclusion concerning the client's competency, but the clinician had declined to comment until she could talk to the client's primary care physician. Predecessor counsel later withdrew and gave the file to the client, who was *pro se* immediately following predecessor counsel's withdrawal. The file included predecessor counsel's email exchange with the client about getting a copy of the clinician's competency report when it was ready.

Once the respondent was appointed, he and predecessor counsel spoke on the telephone and at the courthouse about the case. They discussed several aspects of the case, including the competency evaluation. Predecessor counsel told the respondent that a competency evaluation had been conducted and that he did not know whether the evaluation had been completed or a written report prepared.

The respondent also spoke with the court clinician who had conducted the evaluation. Although the respondent did not specifically ask the clinician if she had prepared a report, he came away from the conversation assuming that she had not. The client repeatedly asked the respondent to obtain a copy of the report, but the respondent dismissed his requests, because the respondent did not believe that the client was incompetent and he did not believe that the evaluation had resulted in a formal report. He therefore took no steps to obtain the report.

In fact, the court clinician did prepare a report in which she concluded that there was reason to question the client's competency and recommended further evaluation on an in-patient basis. The report was filed in the court clinician's office and was not provided to the court or docketed. The respondent did not learn of the report before trial and no competency hearing was held or determination of competency made before trial.

The respondent represented the client at trial four months later. The client was found guilty of two of the charges and placed on probation. A notice of appeal was filed, and appellate counsel filed a motion for production of the court clinic report. Upon receipt of the report, appellate counsel filed a motion for a new trial, which was allowed. The court found that the respondent had been ineffective for failing to request a competency hearing, that the court had been unaware of the evaluation, and that there existed a substantial question concerning the client's competency at the time of trial. The client has since been reevaluated, determined to be competent to stand trial, and placed on pre-trial probation.

In mitigation, the respondent fully cooperated with successor appellate counsel by providing an affidavit to be used in support of the client's motion for a new trial.

The respondent's failure to act diligently and his failure to communicate adequately with his client by failing to obtain a copy of the clinician's report was in violation of Mass. R. Prof. C. 1.3 and Mass. R. Prof. C. 1.4. The respondent received an admonition for his conduct.

ADMONITION NO. 04-07

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)]

SUMMARY:

The respondent was admitted to the Massachusetts Bar in 2005. Following her admission and up until the fall of 2011, the respondent worked at various law firms in the Boston area.

By the end of 2011, the respondent was unemployed. She also was suffering from an undiagnosed case of severe depression, and experiencing significant personal problems as a result. Among other things, the respondent had stopped opening her mail, which included correspondence from the Board of Bar Overseers (the "Board") regarding her upcoming registration renewal. She therefore failed to re-register as required and, in March of 2012, was administratively suspended. The respondent was not aware of her administrative suspension until October of 2012.

In October of 2012, the respondent accepted a position as an attorney at a law firm. During the hiring process, she was alerted to her administrative suspension. She assured her new employer that she would resolve this issue but, and as a result of her depression, failed to follow through to get reinstated. She continued to work at the firm for two months and, during this time frame, was therefore engaged in the unauthorized practice of law. At the end of the two months, the respondent was terminated by the firm.

In April of 2013, the respondent went to a clinical psychologist for an evaluation and was diagnosed with chronic and severe depression. The respondent began taking antidepressant medication and underwent intensive therapy. Shortly afterwards, she contacted the Board and filed a request for reinstatement, along with a payment for her outstanding bar dues and a full disclosure of the nature of her legal employment in the fall of 2012.

The respondent's unauthorized practice of law after her administrative suspension violated Mass. R. Prof C. 5.5(a) and 8.4(d). However, the period of unauthorized practice of law was brief and in mitigation, at all relevant times, the respondent was suffering from chronic and severe depression.

The respondent had no prior disciplinary history. She received an admonition for the foregoing misconduct.

ADMONITION NO. 14-08

CLASSIFICATION:

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

SUMMARY:

The respondent was retained by a named executor to represent the executor in probating an estate in August of 2007. By October of 2007, the respondent took steps necessary to have the permanent executor appointed. The estate consisted of a mobile home, a pick-up truck and two bank accounts totaling approximately $170,000. According to the will, a specific bequest of one of the bank accounts (containing $110,000) was made to a church and the remainder of the estate was bequeathed to the decedent's nephew.

During their initial conversations, the respondent advised the executor of his responsibilities to the estate. In November of 2007, the respondent sent an inventory form to the executor and requested it be completed, signed and returned. The inventory form was not returned to the respondent as requested. Through an oversight, the matter was not calendared by the respondent or his staff, as a result of which the respondent failed to perform any further work on the matter for two years. During this time, the executor did not contact the respondent.

In late 2009, counsel for the residuary beneficiary contacted the respondent about the administration of the estate. The respondent promptly contacted the executor and resumed work on the estate. The respondent discovered that the executor had not transferred the bank account to the church and had not sold the mobile home, although it had been on the market. The executor had used substantial estate funds to maintain the mobile home and repair it after significant flood damage. The executor and his wife had also been using the truck.

The respondent tried to obtain information necessary to settle the estate from the executor throughout 2010, but the executor was uncooperative. By 2010, the church named as a beneficiary also retained counsel. In March of 2011, a petition was filed by the residuary beneficiary requesting an order requiring the executor to render an inventory. The order was allowed by the court but the executor failed to comply. In April of 2011, the respondent attempted to withdraw from the case due to failure of the executor to communicate with the respondent and a breakdown in the attorney/client relationship, but the motion was denied. In July of 2011, the beneficiaries filed a Joint Motion to Remove Fiduciary and a successor executor was appointed. In August of 2011, the respondent filed another motion to withdraw, which was allowed. In April of 2012, the parties reached a

settlement, which was approved by the court. Pursuant to the settlement, the executor made the church whole, the remaining assets were transferred to the residuary beneficiary and the executor paid the attorneys' fees of the church and the residuary beneficiary.

The respondent's failure to take any action to complete the administration of the estate for two years violated Mass. R. Prof. C. 1.3.

The respondent has been admitted to the Massachusetts bar since 1985 and has received no prior discipline. He received an admonition for his conduct conditioned upon attending a continuing legal education program designated by bar counsel.

ADMONITION NO. 14-09

CLASSIFICATIONS:

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

Failing to Act Diligently [Mass. R. Prof. C. 1.3]
Failing to Communicate Adequately with Client [Mass. R. Prof. C. 1.4(a) and (b)]
Withdrawal without Protecting Client [Mass. R. Prof C. 1.16(d)]
Conduct Prejudicial to the Administration of Justice [Mass. R. Prof. C. 8.4(d)

SUMMARY:

In June 2011, a couple hired the respondent to file a bankruptcy petition on their behalf. The respondent charged a flat fee for his services, which the couple paid. For the next year, the respondent worked on the matter periodically, but failed to file the petition. In July 2012, the couple tried to reach the respondent and learned that his office was closed and his telephone was no longer in service. The couple subsequently relocated and filed their bankruptcy petition in another state.

The couple filed a request for investigation against the respondent with the Office of Bar Counsel. The respondent contacted the couple and entered into a settlement agreement, which he put in writing and requested they sign. The agreement provided for a full refund of the respondent's legal fee. Further, the agreement provided, in consideration of the refund, the couple would withdraw their disciplinary complaint against the respondent. The couple signed the agreement and the respondent refunded his fee in full.

By failing to file the bankruptcy petition, the respondent violated Mass. R. Prof. C. 1.2(a) and 1.3. By failing to notify his clients that he was closing his office and would not be filing the petition, the respondent violated Mass. R. Prof. C. 1.4(a) and (b). By failing to promptly return his unearned fee, the respondent violated Mass. R. Prof. C. 1.16(d). By making the withdrawal of the disciplinary complaint a condition of the settlement, the respondent violated S.J.C. Rule 4:01 §10 and Mass. R. Prof. C. 8.4(d).

The respondent was admitted to the bar in Massachusetts in 2004. He has no history of discipline. In mitigation, the respondent was distracted by his responsibility to his family as the primary caregiver for his wife, who was seriously ill and bedridden, as well as the primary caregiver for his two young children and an elderly friend. He accordingly received an admonition for his misconduct.

ADMONITION NO. 14-10

CLASSIFICATION:

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

SUMMARY:

The respondent represented clients in a civil action in Lowell District Court when they were sued by a Maryland resident with whom they had done business at their Lowell-area restaurant. While the case was pending in Lowell, the plaintiff filed suit against the defendants in a district court in Montgomery County, Maryland, alleging the same facts and damages. When the defendants contacted the respondent and informed him of the Maryland suit, he explained to them that they would need to retain counsel in Maryland and that he was not licensed there.

Under pressure to resolve cases before leaving his firm, the respondent then mailed to the Maryland court a Motion to Dismiss. On the correspondence and the motion, the respondent listed his office address in Massachusetts and did not purport to have a license number or office address in Maryland. Despite the fact that there was no indication on the filing that the respondent was licensed in Maryland, the clerk's office docketed the motion and the Court ultimately acted on it without hearing.

By knowingly filing a pleading in Maryland while not licensed to practice in that jurisdiction, the respondent violated Mass. R. Prof. C. 5.5(a).

The respondent has been a member of the Massachusetts bar since 2010 and has received no prior discipline. He received an admonition for his conduct.

ADMONITION NO. 14-11

CLASSIFICATIONS:

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

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

SUMMARY:

The respondent represented a husband in an acrimonious divorce proceeding in which child custody was a contested issue. In 2009, the court appointed a Guardian Ad Litem to consider a variety of issues prior to the trial. On October 8, 2009, the respondent received a copy of the GAL report from the probate court. On that same date, the respondent faxed a copy of the GAL report to the husband, in violation of Standing Order 2-08 which provides for the impoundment of GAL reports and prohibited the respondent from providing a copy to the client except upon the allowance of a motion. The respondent did not intentionally violate the standing order but did not appreciate that it prohibited her from providing a copy of the report to her client.

The husband subsequently remarried. In late 2011, his second wife filed a Harassment Prevention Order (HPO) action against the ex-wife and provided a copy of the GAL report to the judge to review. The report was not entered into evidence and was returned to the second wife by the judge, who granted the HPO. In an order denying a motion to vacate, the judge indicated that he relied upon the second wife's affidavit and testimony and not the GAL report in granting the HPO. The respondent subsequently obtained the copy of the report in the husband's possession and returned it to the probate court on March 13, 2012.

The respondent's conduct in failing to understand the terms of the standing order and in faxing the GAL report to the client in violation of the standing order violated Mass. R. Prof. C. 1.1 and 8.4(d).

The respondent was admitted to practice in Massachusetts in 1993 and has no prior discipline. The respondent received an admonition for this misconduct.

ADMONITION NO. 14-12

CLASSIFICATION:

Improper Business Transaction with Client [Mass. R. Prof. C. 1.8(a)]

SUMMARY:

In 2012, the respondent agreed to represent a client in a criminal matter pending in superior court and in a post-divorce complaint for modification and contempt pending in probate and family court. The respondent advised the client that he would defend the criminal matter for a flat fee of $50,000 plus expenses and that he would charge an hourly rate of $350 to defend the domestic matter. Because the client was incarcerated and unable to pay the flat fee in the criminal case or a retainer in the domestic matter, the respondent and the client agreed that the client would sign a promissory note and mortgage deed on property owned by the client out of state.

The respondent and a notary public visited the client in jail and had him sign the promissory note and mortgage deed on the same day. The notary witnessed the client's signature on the mortgage deed. Before entering into the business transaction with the client, the respondent did not advise the client to seek independent legal counsel and did not afford him a reasonable opportunity to do so. The client subsequently claimed not to have understood certain of the provisions of the mortgage.

The respondent's conduct in entering into a business transaction with a client without affording the client a reasonable opportunity to seek advice from independent legal counsel was in violation of Mass. R. Prof. C. 1.8(a). In mitigation, the respondent has discharged the mortgage.

The respondent was admitted to practice in 1978. He received an admonition for his misconduct.

ADMONITION NO. 14-13

CLASSIFICATIONS:

Failing to Act Diligently [Mass. R. Prof. C. 1.3]
Failing to Communicate Adequately with Client [Mass. R. Prof. C. 1.4(a) and (b)]

SUMMARY:

In October 2004, the respondent was retained to commence suit on behalf of a client against a former business partner. The client and his former partner had operated a real estate development business under oral agreements from 1988 until approximately 1999. The respondent filed suit in October 2004, filed an amended complaint in November 2004, and timely answered a counterclaim in March 2005.

In 2005, the respondent served requests for production of documents on the defendant and received responses, and in 2006, the defendant filed requests for production of documents, but the respondent did not respond. In 2007 and 2008, the respondent filed four assented-to motions to continue the pretrial conference, which was ultimately held in April 2008, and trial was scheduled for December 2008. After several continuances of the trial date, due to the efforts of the parties to settle the case, a date of March 22, 2010 was set.

Over the course of the proceedings, the lawyers and the parties met at least three times to discuss settlement, as well as mediation. The respondent and opposing counsel ultimately reported to the court prior to the trial date that they intended to arbitrate the matter. On March 15, 2010, the court issued an order for entry of dismissal *nisi* and ordered the parties to file an agreement for judgment or stipulation of dismissal by September 15, 2010.

The respondent and opposing counsel then took no further action. The respondent did not advise the client that the matter had been taken off the trial list, he did not pursue the mediation, and he did not notify the court of the status of the matter or file a motion to restore the case to the trial list by September 15, 2010. On September 27, 2010, the court issued a judgment of dismissal for failure to comply with the *nisi* order.

The client emailed the respondent in April and May 2011 requesting an update and asking that the respondent either pursue arbitration or set a trial date. The respondent replied to the second email that he would contact the client to discuss the next step, but he never did. Later in 2011, the client went to the court and discovered that the case had been dismissed.

The respondent, who was admitted to practice in 1973, received a private admonition in 1992 for neglect of a legal matter. *Private Reprimand No. PR 92-3*, 8 Mass. Att'y Disc. R. 272 (1992). In the current case, he lost track of the matter due in part to a busy trial schedule at the time. However, the complexity of the case, the number of parcels of land involved, and the oral nature of the agreements made it unlikely that either side could prevail, and the potential costs of litigation or mediation were high relative to the potential value of the case.

The respondent's conduct in failing to prosecute the case or pursue settlement or mediation was in violation of Mass. R. Prof. C. 1.3. The respondent's failure to keep the client reasonably informed about the status of the case or to explain the matter to the client so as to permit the client to make informed decisions was in violation of Mass. R. Prof. C. 1.4 (a) and (b). In mitigation, the respondent did not ever bill the client for his services.

The respondent received an admonition for his misconduct, conditioned upon having the Law Office Management Assistance Program (LOMAP) inspect and audit his law office practices and procedures.

ADMONITION NO. 14-14

CLASSIFICATION:

Obtaining Evidence in Violation of Legal Rights of Third Person [Mass. R. Prof. C. 4.4]

SUMMARY:

In February 2011, the respondent agreed to represent a client in a divorce. On March 7, 2011, the respondent filed a complaint for divorce on behalf of her client. The husband was represented by counsel. During the following year, the respondent became frustrated by the husband's delays in responding to discovery.

On March 2, 2012, husband was terminated from his position with his employer. He called his wife and informed her of the termination and that he planned to appeal it. He also told her that his employer would send a letter regarding the termination to the marital home, in which she resided.

A few days later, a letter arrived at the marital home addressed to husband from the husband's employer. The wife called the respondent to tell her that the letter had come. The respondent understood that the wife routinely opened mail that came to the marital home in the name of the husband. The respondent was also mindful that a pre-trial hearing was scheduled for March 20, 2012.

The respondent told her client that she could open the letter and instructed her to make a copy of it. The respondent was aware that she could gain access to the letter through discovery, but wanted a copy of the letter before the pre-trial date. By letter dated March 15, 2012, the respondent informed husband's counsel that her client had opened the correspondence and enclosed a copy of the termination letter.

The respondent's conduct of instructing her client to open the letter and make a copy of it as a way to circumvent the discovery process violated Mass. R. Prof. C. 4.4.

On January 16, 2013, the parties entered into a separation agreement, and a judgment of divorce nisi issued on January 23, 2013. No ultimate harm resulted from the respondent's actions. The respondent was admitted to the bar in 1992 and has no history of discipline. She accordingly received an admonition for her misconduct.

ADMONITION NO. 14-15

CLASSIFICATIONS:

Trust Account Commingling [Mass. R. Prof. C. 1.15(b)(2)]
Improper Method of Withdrawal [Mass. R. Prof. C. 1.15(e)(3)]

SUMMARY:

During a period of time from January 1, 2011 through April 30, 2014, the respondent failed to hold trust funds separate from personal or business funds and made multiple cash withdrawals from his IOLTA account. Specifically, in addition to the deposit and disbursement of client funds, the respondent kept excess personal funds in his IOLTA account. The respondent then withdrew these personal funds via cash withdrawals.

The respondent's conduct in maintaining excess personal funds in his IOLTA account and in withdrawing cash from an IOLTA account violated Mass. R. Prof. C. 1.15(b)(2) and (e)(3).

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

ADMONITION NO. 14-16

CLASSIFICATION:

Knowingly Disobeying Rules of Tribunal [Mass. R. Prof. C. 3.4(c)]

SUMMARY:

In 2008, the respondent was retained to represent a client as replacement counsel in an ongoing litigation concerning the client's purchase of a gas station. The fee agreement provided for a flat fee to be paid in increments, but an hourly fee if the representation was terminated before it concluded. The respondent accordingly filed his appearance in the litigation. He also reviewed the voluminous case files and communicated with opposing counsel. However, shortly thereafter, certain disagreements arose between the respondent and the client about the appropriate legal strategy in the case. As a result of those disagreements, the client terminated the respondent as his lawyer. At that point, the respondent had been paid $7,000 in legal fees.

Following his termination, the respondent returned the case files to the client. He also submitted a final bill claiming an additional $2,887.50 in legal fees on an hourly basis for services rendered. The client refused to pay and filed a demand for fee arbitration with the Boston Bar Association ("BBA").

An arbitration at the BBA followed. It resulted in a decision requiring the respondent to provide a refund of approximately $1,400 to the client, with payment due within 15 days. Notice of the award was sent to the respondent but he did not receive it and did not make any effort to check or to determine the outcome.

Four years later, the respondent was contacted by a lawyer for the client about the unpaid arbitration award. The respondent asked for additional time to make payment on the grounds that he was experiencing financial problems.

When no payment was forthcoming, the client decided to and did file a small claims action against the respondent. The respondent failed to appear at the trial and a default judgment was entered against him. The respondent was served with the judgment but made no payments.

The client subsequently filed a request for investigation with the Office of Bar Counsel. During the investigation that followed, the respondent provided the client with the refund called for by the BBA arbitration award.

By knowingly disobeying the arbitration award even after he was contacted by successor counsel and the small-claims judgment, the respondent violated Mass. R. Prof. C. 3.4(c).

The respondent, who was admitted in 2001 and has no prior discipline, received an admonition for his misconduct.

ADMONITION NO. 14-17

CLASSIFICATION:

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

SUMMARY:

The respondent consulted with a client about possible representation in criminal and civil matters. The respondent's duty of confidentiality to the prospective client arose as soon as he agreed to consider representing the client.

Some weeks later, the client called the respondent and made a threat of imminent harm to public employees. The respondent reported the threats to the police. The divulgence of the client's threats fell within Mass. R. Prof. C. 1.6 (b)(1), which allows an attorney to reveal confidential client information to prevent the commission of a criminal act that the lawyer reasonably believes is likely to result in death or substantial bodily injury.

When the situation became public, reporters contacted the respondent. The respondent shared confidential information with the reporters concerning the client's threats. No harm resulted. The respondent's divulgence, without consent, of confidential information to the reporters, violated Mass. R. Prof. C. 1.6(a), but resulted in no harm.

The respondent received an admonition for the misconduct, conditioned on attendance at a CLE program designated by bar counsel.

ADMONITION NO. 14-18

CLASSIFICATIONS:

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

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

Failure to Safeguard Client Property other than Funds [Mass. R. Prof. C. 1.15(b)(3)]

SUMMARY:

The respondent is a sole practitioner specializing in domestic relations law. In August 2012, the respondent agreed to represent a client in her divorce. In March 2013, the parties signed a separation agreement and the court entered a judgment nisi of divorce. After the divorce became final in May 2013, the respondent agreed to prepare and seek approval of two qualified domestic relations orders (QDROs), as set forth in the parties' separation agreement. On November 29, 2013, the respondent filed with the Probate and Family Court an assented-to motion to approve the two QDROs that he had prepared. The Court approved the QDROs, and mailed the signed orders to the respondent. The respondent received the original signed QDROs by early December 2013.

After receiving the original QDROs from the court, the respondent failed to promptly send the approved QDROs to the retirement plan administrators and misplaced the orders. Between the end of November 2013 and May 1, 2014, the respondent failed to reply to multiple telephone calls and emails from his client requesting information about the status of the QDROs. When he could not find the missing orders, the respondent did not undertake to have the court issue replacement orders.

On April 2, 2014, the client filed a request for investigation with bar counsel. After receiving notice of bar counsel's investigation, the respondent searched his office and found the misplaced original orders. On May 1, 2014, the respondent mailed the QDROs to the retirement plans, and wrote to the client to apologize for his lack of communication and his delay in processing the QDROs. By the end of June 2014, the retirement plan administrators confirmed that the two QDROs had been received, accepted and administered. The delay in providing the approved QDROs to the plan administrators did not result in any financial harm to the client, because the orders related back to the time of the divorce. The respondent did not charge a legal fee for his services in seeking approval of the two QDROs.

The respondent's failure to promptly send the approved QDROs to the plan administrators to secure their implementation violated Mass. R. Prof. C. 1.3 (obligation to act with reasonable diligence and promptness in representing a client). The respondent's failure to respond to telephone calls and emails from his client requesting information about the status of the matter for over four months violated Mass. R. Prof. C. 1.4(a) (obligation to promptly comply with reasonable requests for information from a client). The respondent's temporary loss of the orders violated Mass. R. Prof. C. 1.15(b)(3) (obligation to safeguard a client's property).

The respondent, who was admitted to practice in 1977 and had no prior discipline, received an admonition for his conduct. As a condition of the admonition, the respondent agreed to contact the Law Office Management Program (LOMAP) and obtain an assessment of his law office management practices.

ADMONITION NO. 14-01

CLASSIFICATION:

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

SUMMARY:

The respondent was the executor of the estate of a client and a co-trustee of a trust established as part of the client's estate plan. First the client and then his wife were the original beneficiaries, with their five adult children as ultimate beneficiaries.

The respondent believed all stocks and bonds of the client had been identified and transferred into the trust during the client's lifetime. The client predeceased his wife. Following the death of the client's wife in 2007, additional stocks were discovered by the children that were in the possession of the unclaimed property division of the Commonwealth. The respondent failed to promptly take the steps necessary to recover this property for the benefit of the client's estate. In 2010, the beneficiaries retained counsel to assist them in this matter. The respondent subsequently recovered the assets and there was no loss as a result of the delay. The respondent reimbursed the estate the amount paid by the beneficiaries to new counsel. The respondent also delayed in filing the accountings for the client's estate; however all assets were administered by the trust pursuant to a pour-over provision in the will and there was no harm to the beneficiaries as a result.

The respondent's failure to promptly recover the unclaimed assets for the benefit of the estate and failure to promptly file the estate accountings constituted neglect and failure to act diligently in violation of Mass. R. Prof. C. 1.3.

The respondent has been a member of the Massachusetts bar since 1976 and has received no prior discipline. He received an admonition for his conduct.

ADMONITION NO. 14-02

CLASSIFICATION:

Conflict with Former Client in Substantially Related Matter [Mass. R. Prof. C. 1.9(a)]

SUMMARY:

In 2002, the respondent was retained on a *pro bono* basis to represent a group of residents and an environmental nonprofit group in their joint opposition to a developer's plan to construct a 280-unit apartment building. In 2005, a settlement was reached among the residents, the nonprofit, and the developer. The respondent was involved in drafting the 2005 settlement agreement, which authorized construction of the building but required the developer to make certain improvements to the site.

In 2006, the conservation commission rejected some of the improvements, thereby derailing implementation of the settlement. In response, the respondent, on behalf of the nonprofit and with the support of the residents, filed a *certiorari* action in superior court, seeking to annul the commission's decision. Shortly thereafter, he withdrew as counsel to the nonprofit and the residents.

In late 2007, without the respondent's involvement, the nonprofit and the developer negotiated a "restated" version of the 2005 settlement agreement. Before it could become effective, the restated agreement needed the approval of the residents. When the respondent learned of the possibility of a restated settlement agreement, he informed the nonprofit (his now-former client) that he was once again the "attorney of record" for the residents. He also arranged for two of the residents to bring a civil action against the developer in superior court seeking, among other things, specific performance of the 2005 agreement. This relief would have undermined the modifications the nonprofit sought in the restated agreement. The respondent did not obtain the nonprofit's informed consent to his representation of the two residents.

The superior court remanded the matter to the commission and ordered it to hold public hearings. Both the nonprofit and the two residents concluded that they did not want the commission to specifically enforce all of the terms of the 2005 agreement. At the commission hearing, the respondent advocated for specific

enforcement of the 2005 agreement. After the commission rendered its decision -- a favorable outcome for both the nonprofit and the two residents -- the former clients requested in writing that the respondent cease his course of action. The respondent refused and, contrary to his interests and requests of the former clients, filed an administrative appeal of the commission's decision. The former clients filed a motion in superior court requesting that the respondent be disqualified from further representing any interests adverse to them in matters substantially related to the apartment building. The respondent opposed this motion. After hearing, the superior court disqualified the respondent. He appealed, although eventually he dropped his appeal.

The respondent's conduct in representing clients in a matter adverse to former clients when the two matters were substantially related and without his former clients' consent violated Mass. R. Prof. C. 1.9(a).

The respondent has no disciplinary history. After he received an admonition for the misconduct described above, he requested an expedited hearing under BBO rule 2.12; following that, an admonition was recommended by a special hearing officer and approved by the Board.

ADMONITION NO. 14-03

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. 1.2a]

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

SUMMARY:

In February 2010, a client who had been terminated from his position as a municipal employee in Massachusetts, engaged the respondent to represent him seeking reinstatement to his position and income lost as a result of his transfer to a less remunerative position. The client was a member of a union, and his position was subject to a collective bargaining agreement (Agreement). The client had been "bumped" from his position by another employee who claimed more seniority, a claim that the client disputed.

The Union denied the client's request for representation, maintaining that the client's "bump" was authorized by the terms of the Agreement and that the seniority issue had been resolved by a 1998 grievance decision that concluded that certain types of part-time services, such as those at issue in this matter, would not count towards seniority. The client then filed his own grievance with the City, which was denied.

At this point, the client retained the respondent. The deadline for filing charges of prohibited practices with the Massachusetts Department of Labor Relations (DLR) was June 17, 2010, six months from the date of the notice of termination.

As a tactical matter, the respondent hoped to proceed in federal as opposed to state court on behalf of his client, due to the political position and perceived influence of the employee who had "bumped" into the client's original position. However, the respondent failed to adequately research the laws and procedures for bringing prohibited action charges against the City and Union. On June 16, 2010, the

respondent filed a civil complaint in U.S. District Court, asserting claims against the City and the Union under the National Labor Relations Act, which does not apply to employees of states and municipalities. The City and the Union each filed motions to dismiss the federal claim based on lack of jurisdiction. After hearing arguments, the Court issued an order from the bench, granting the motions to dismiss.

Although aware of the six-month deadline for filing claims at the DLR, the respondent did not preserve his client's rights to proceed at the DLR by simultaneously filing timely prohibited action charges against the City and Union at the DLR. The respondent discussed with his client the decision to file the case in federal court. However, he did not fully consult with the client about the decision not to simultaneously file state charges, and obtain the client's consent after consultation to missing the deadline for filing at the DLR.

On September 2, 2010, the respondent filed charges on behalf of his client at the DLR against the City and Union. Both the City and the Union filed responses with the DLR requesting that the charges be dismissed as not timely filed. After an in-person investigation conference, the DLR issued a decision dated January 28, 2011, allowing the charges against the Union to go forward, citing actions that had taken place after the termination of the client's original position. On January 28, 2011, the DLR dismissed the charges against the City both as untimely and on the merits. The dismissal order notified the charging party that an appeal could be filed within ten days of receipt of the order pursuant to the governing state regulations.

The respondent met with the client on February 27, 2011, to review the two decisions received from the DLR. The respondent failed to fully explain to the client the consequences of not appealing the dismissal of charges against the City, including that the DLR could only order the City, not the Union, to reinstate the client to his original position, and then only if the client prevailed against the City. Based on his misunderstanding of the ramifications of his decision, the client instructed the respondent not to appeal the dismissal of the charges against the City and to proceed only with the pending claim against the Union.

Shortly thereafter, but after the ten-day limit for filing an appeal had expired, the client engaged successor counsel to represent him, and terminated the respondent's representation. Successor counsel attempted unsuccessfully to obtain permission from the DLR to file the appeal late. Ultimately, the client voluntarily dismissed the charges against the Union.

By failing to conduct sufficient and necessary research into the client's claims and avenues for relief and by failing to handle the matter with the knowledge, skill, thoroughness, and preparation reasonably necessary for the representation, the respondent violated Mass. R. Prof. C. 1.1.

By failing to file a timely complaint on his client's behalf against the City with the DLR, the respondent failed to seek the lawful objectives of his client through reasonably available means permitted by law, in violation of Mass. R. Prof. C. 1.2(a).

By failing to adequately explain to the client the consequences of not filing a timely claim at the DLR, and that the dismissal of the complaint against the City prevented the client from being reinstated to his original position, the respondent violated Mass. R. Prof. C. 1.4(b).

The respondent was admitted to practice in 1981 and has no prior discipline. In mitigation, he fully refunded the fees the client had paid him. The client's chances of success, even had the claim been properly processed, were at best problematic. The respondent accordingly received an admonition for his conduct.

ADMONITION NO. 14-04

CLASSIFICATIONS:

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

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

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

SUMMARY:

In December 2011, a client retained the respondent for an uncontested divorce. The respondent and the client signed an hourly fee agreement in which the respondent agreed to bill for his services at $200 per hour. The client gave the respondent an advance fee payment of $1,400, which the respondent deposited to his IOLTA account.

Between December 2011 and March 2012, the respondent prepared draft pleadings and a separation agreement for the divorce. The respondent withdrew $750 and $650 from his IOLTA account in February and April 2012, respectively, after earning those amounts for work on the case. The respondent did not send any invoices or other notice of the fee withdrawals to the client upon the withdrawals.

By April 2012, the client and his wife had signed the separation agreement, and it was time to institute a divorce proceeding on the client's behalf. Thereafter, however, the respondent failed to file the pleadings or take other action of substance in the case. Between about April and August 2012, the respondent failed to return the client's calls or reply to written requests for status updates. In August 2012, the client hired new counsel and discharged the respondent, who promptly gave the client's file to the new lawyer.

The respondent's failure to give the client, on or before the date of each fee withdrawal, an itemized bill or other accounting showing the services rendered,

written notice of amount and date of the withdrawal, and a statement of the balance of the client's funds in the trust account violated Mass. R. Prof. C. 1.15(d)(2). The respondent's failure timely to pursue the divorce violated Mass. R. Prof. C. 1.3. His failure to reply promptly to the client's inquiries violated Mass. R. Prof. C. 1.4(a).

The respondent had no history of discipline. In mitigation, the respondent suffered from severe depression resulting from serious personal and family problems for which he obtained treatment. The respondent received an admonition for his misconduct.

ADMONITION NO. 14-05

CLASSIFICATIONS:

Failing to Communicate Adequately with Client [Mass. R. Prof. C. 1.4]
Withdrawal without Protecting Client [Mass. R. Prof C. 1.16(d)]
Conduct Prejudicial to the Administration of Justice [Mass. R. Prof. C. 8.4(d)]

SUMMARY:

In 2009, a client hired the respondent to represent him in an investigation by the Department of Public Health Division of Health Professions Licensure (DPH). In December 2010, DPH referred the matter for formal prosecution. In 2011, the respondent and the client had a heated argument concerning the representation. The respondent believed that he could no longer effectively communicate with the client, and failed thereafter to respond to the client's requests for information. The respondent, however, did not withdraw from the representation.

In April 2012, the DPH scheduled a pre-trial hearing in the matter to occur in May 2012. The respondent failed to advise his client of the pre-trial hearing. The respondent also, without notifying his client, filed a notice of withdrawal. Neither the respondent nor the client appeared at the pre-trial hearing, and the client was defaulted. The client hired successor counsel, and was allowed to remove the default after he demonstrated that the respondent had failed to notify him of the pre-trial hearing and had failed to respond to his requests for information.

By failing to respond to his client's requests for information, and by failing to notify his client of the pre-trial hearing date and of his intent to withdraw, the respondent violated Mass. R. Prof. C. 1.4(a) and (b). By withdrawing without notice to the client, the respondent violated Mass. R. Prof. C. 1.16(d) and 8.4(d).

The respondent was admitted to practice in Massachusetts in 2004. He has no prior history of discipline. In mitigation, when the misconduct occurred, the respondent was experiencing stress related to the transition of his practice from a firm to a sole practitioner. He received an admonition for his misconduct in this matter, conditioned upon obtaining a law office management evaluation.

ADMONITION NO. 14-06

CLASSIFICATIONS:

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

SUMARY:

In October 2009, the respondent, a bar advocate, was appointed successor counsel for a client facing charges of assault and battery, criminal harassment, and witness intimidation pending in district court.

At the time of the respondent's appointment, the client had been *pro se* for two weeks and had previously had several court-appointed lawyers, all of whom had been permitted to withdraw. The respondent's immediate predecessor had accompanied the client to a court-ordered competency evaluation conducted by the court clinician. Despite the fact that the court had ordered the court clinician to conduct a competency evaluation, there was no corresponding docket entry indicating that the court had ordered the evaluation.

Following the evaluation, the respondent's predecessor had asked the clinician for her conclusion concerning the client's competency, but the clinician had declined to comment until she could talk to the client's primary care physician. Predecessor counsel later withdrew and gave the file to the client, who was *pro se* immediately following predecessor counsel's withdrawal. The file included predecessor counsel's email exchange with the client about getting a copy of the clinician's competency report when it was ready.

Once the respondent was appointed, he and predecessor counsel spoke on the telephone and at the courthouse about the case. They discussed several aspects of the case, including the competency evaluation. Predecessor counsel told the respondent that a competency evaluation had been conducted and that he did not know whether the evaluation had been completed or a written report prepared.

The respondent also spoke with the court clinician who had conducted the evaluation. Although the respondent did not specifically ask the clinician if she had prepared a report, he came away from the conversation assuming that she had not. The client repeatedly asked the respondent to obtain a copy of the report, but the respondent dismissed his requests, because the respondent did not believe that the client was incompetent and he did not believe that the evaluation had resulted in a formal report. He therefore took no steps to obtain the report.

In fact, the court clinician did prepare a report in which she concluded that there was reason to question the client's competency and recommended further evaluation on an in-patient basis. The report was filed in the court clinician's office and was not provided to the court or docketed. The respondent did not learn of the report before trial and no competency hearing was held or determination of competency made before trial.

The respondent represented the client at trial four months later. The client was found guilty of two of the charges and placed on probation. A notice of appeal was filed, and appellate counsel filed a motion for production of the court clinic report. Upon receipt of the report, appellate counsel filed a motion for a new trial, which was allowed. The court found that the respondent had been ineffective for failing to request a competency hearing, that the court had been unaware of the evaluation, and that there existed a substantial question concerning the client's competency at the time of trial. The client has since been reevaluated, determined to be competent to stand trial, and placed on pre-trial probation.

In mitigation, the respondent fully cooperated with successor appellate counsel by providing an affidavit to be used in support of the client's motion for a new trial.

The respondent's failure to act diligently and his failure to communicate adequately with his client by failing to obtain a copy of the clinician's report was in violation of Mass. R. Prof. C. 1.3 and Mass. R. Prof. C. 1.4. The respondent received an admonition for his conduct.

ADMONITION NO. 14-07

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)]

SUMMARY:

The respondent was admitted to the Massachusetts Bar in 2005. Following her admission and up until the fall of 2011, the respondent worked at various law firms in the Boston area.

By the end of 2011, the respondent was unemployed. She also was suffering from an undiagnosed case of severe depression, and experiencing significant personal problems as a result. Among other things, the respondent had stopped opening her mail, which included correspondence from the Board of Bar Overseers (the "Board") regarding her upcoming registration renewal. She therefore failed to re-register as required and, in March of 2012, was administratively suspended. The respondent was not aware of her administrative suspension until October of 2012.

In October of 2012, the respondent accepted a position as an attorney at a law firm. During the hiring process, she was alerted to her administrative suspension. She assured her new employer that she would resolve this issue but, and as a result of her depression, failed to follow through to get reinstated. She continued to work at the firm for two months and, during this time frame, was therefore engaged in the unauthorized practice of law. At the end of the two months, the respondent was terminated by the firm.

In April of 2013, the respondent went to a clinical psychologist for an evaluation and was diagnosed with chronic and severe depression. The respondent began taking antidepressant medication and underwent intensive therapy. Shortly afterwards, she contacted the Board and filed a request for reinstatement, along with a payment for her outstanding bar dues and a full disclosure of the nature of her legal employment in the fall of 2012.

The respondent's unauthorized practice of law after her administrative suspension violated Mass. R. Prof C. 5.5(a) and 8.4(d). However, the period of unauthorized practice of law was brief and in mitigation, at all relevant times, the respondent was suffering from chronic and severe depression.

The respondent had no prior disciplinary history. She received an admonition for the foregoing misconduct.

ADMONITION NO. 14-08

CLASSIFICATION:

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

SUMMARY:

The respondent was retained by a named executor to represent the executor in probating an estate in August of 2007. By October of 2007, the respondent took steps necessary to have the permanent executor appointed. The estate consisted of a mobile home, a pick-up truck and two bank accounts totaling approximately $170,000. According to the will, a specific bequest of one of the bank accounts (containing $110,000) was made to a church and the remainder of the estate was bequeathed to the decedent's nephew.

During their initial conversations, the respondent advised the executor of his responsibilities to the estate. In November of 2007, the respondent sent an inventory form to the executor and requested it be completed, signed and returned. The inventory form was not returned to the respondent as requested. Through an oversight, the matter was not calendared by the respondent or his staff, as a result of which the respondent failed to perform any further work on the matter for two years. During this time, the executor did not contact the respondent.

In late 2009, counsel for the residuary beneficiary contacted the respondent about the administration of the estate. The respondent promptly contacted the executor and resumed work on the estate. The respondent discovered that the executor had not transferred the bank account to the church and had not sold the mobile home, although it had been on the market. The executor had used substantial estate funds to maintain the mobile home and repair it after significant flood damage. The executor and his wife had also been using the truck.

The respondent tried to obtain information necessary to settle the estate from the executor throughout 2010, but the executor was uncooperative. By 2010, the church named as a beneficiary also retained counsel. In March of 2011, a petition was filed by the residuary beneficiary requesting an order requiring the executor to render an inventory. The order was allowed by the court but the executor failed to comply. In April of 2011, the respondent attempted to withdraw from the case due to failure of the executor to communicate with the respondent and a breakdown in the attorney/client relationship, but the motion was denied. In July of 2011, the beneficiaries filed a Joint Motion to Remove Fiduciary and a successor executor was appointed. In August of 2011, the respondent filed another motion to withdraw, which was allowed. In April of 2012, the parties reached a

settlement, which was approved by the court. Pursuant to the settlement, the executor made the church whole, the remaining assets were transferred to the residuary beneficiary and the executor paid the attorneys' fees of the church and the residuary beneficiary.

The respondent's failure to take any action to complete the administration of the estate for two years violated Mass. R. Prof. C. 1.3.

The respondent has been admitted to the Massachusetts bar since 1985 and has received no prior discipline. He received an admonition for his conduct conditioned upon attending a continuing legal education program designated by bar counsel.

ADMONITION NO. 14-09

CLASSIFICATIONS:

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

Failing to Act Diligently [Mass. R. Prof. C. 1.3]
Failing to Communicate Adequately with Client [Mass. R. Prof. C. 1.4(a) and (b)]
Withdrawal without Protecting Client [Mass. R. Prof C. 1.16(d)]
Conduct Prejudicial to the Administration of Justice [Mass. R. Prof. C. 8.4(d)

SUMMARY:

In June 2011, a couple hired the respondent to file a bankruptcy petition on their behalf. The respondent charged a flat fee for his services, which the couple paid. For the next year, the respondent worked on the matter periodically, but failed to file the petition. In July 2012, the couple tried to reach the respondent and learned that his office was closed and his telephone was no longer in service. The couple subsequently relocated and filed their bankruptcy petition in another state.

The couple filed a request for investigation against the respondent with the Office of Bar Counsel. The respondent contacted the couple and entered into a settlement agreement, which he put in writing and requested they sign. The agreement provided for a full refund of the respondent's legal fee. Further, the agreement provided, in consideration of the refund, the couple would withdraw their disciplinary complaint against the respondent. The couple signed the agreement and the respondent refunded his fee in full.

By failing to file the bankruptcy petition, the respondent violated Mass. R. Prof. C. 1.2(a) and 1.3. By failing to notify his clients that he was closing his office and would not be filing the petition, the respondent violated Mass. R. Prof. C. 1.4(a) and (b). By failing to promptly return his unearned fee, the respondent violated Mass. R. Prof. C. 1.16(d). By making the withdrawal of the disciplinary complaint a condition of the settlement, the respondent violated S.J.C. Rule 4:01 §10 and Mass. R. Prof. C. 8.4(d).

The respondent was admitted to the bar in Massachusetts in 2004. He has no history of discipline. In mitigation, the respondent was distracted by his responsibility to his family as the primary caregiver for his wife, who was seriously ill and bedridden, as well as the primary caregiver for his two young children and an elderly friend. He accordingly received an admonition for his misconduct.

ADMONITION NO. 14-10

CLASSIFICATION:

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

SUMMARY:

The respondent represented clients in a civil action in Lowell District Court when they were sued by a Maryland resident with whom they had done business at their Lowell-area restaurant. While the case was pending in Lowell, the plaintiff filed suit against the defendants in a district court in Montgomery County, Maryland, alleging the same facts and damages. When the defendants contacted the respondent and informed him of the Maryland suit, he explained to them that they would need to retain counsel in Maryland and that he was not licensed there.

Under pressure to resolve cases before leaving his firm, the respondent then mailed to the Maryland court a Motion to Dismiss. On the correspondence and the motion, the respondent listed his office address in Massachusetts and did not purport to have a license number or office address in Maryland. Despite the fact that there was no indication on the filing that the respondent was licensed in Maryland, the clerk's office docketed the motion and the Court ultimately acted on it without hearing.

By knowingly filing a pleading in Maryland while not licensed to practice in that jurisdiction, the respondent violated Mass. R. Prof. C. 5.5(a).

The respondent has been a member of the Massachusetts bar since 2010 and has received no prior discipline. He received an admonition for his conduct.

ADMONITION NO. 14-11

CLASSIFICATIONS:

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

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

SUMMARY:

The respondent represented a husband in an acrimonious divorce proceeding in which child custody was a contested issue. In 2009, the court appointed a Guardian Ad Litem to consider a variety of issues prior to the trial. On October 8, 2009, the respondent received a copy of the GAL report from the probate court. On that same date, the respondent faxed a copy of the GAL report to the husband, in violation of Standing Order 2-08 which provides for the impoundment of GAL reports and prohibited the respondent from providing a copy to the client except upon the allowance of a motion. The respondent did not intentionally violate the standing order but did not appreciate that it prohibited her from providing a copy of the report to her client.

The husband subsequently remarried. In late 2011, his second wife filed a Harassment Prevention Order (HPO) action against the ex-wife and provided a copy of the GAL report to the judge to review. The report was not entered into evidence and was returned to the second wife by the judge, who granted the HPO. In an order denying a motion to vacate, the judge indicated that he relied upon the second wife's affidavit and testimony and not the GAL report in granting the HPO. The respondent subsequently obtained the copy of the report in the husband's possession and returned it to the probate court on March 13, 2012.

The respondent's conduct in failing to understand the terms of the standing order and in faxing the GAL report to the client in violation of the standing order violated Mass. R. Prof. C. 1.1 and 8.4(d).

The respondent was admitted to practice in Massachusetts in 1993 and has no prior discipline. The respondent received an admonition for this misconduct.

ADMONITION NO. 14-12

CLASSIFICATION:

Improper Business Transaction with Client [Mass. R. Prof. C. 1.8(a)]

SUMMARY:

In 2012, the respondent agreed to represent a client in a criminal matter pending in superior court and in a post-divorce complaint for modification and contempt pending in probate and family court. The respondent advised the client that he would defend the criminal matter for a flat fee of $50,000 plus expenses and that he would charge an hourly rate of $350 to defend the domestic matter. Because the client was incarcerated and unable to pay the flat fee in the criminal case or a retainer in the domestic matter, the respondent and the client agreed that the client would sign a promissory note and mortgage deed on property owned by the client out of state.

The respondent and a notary public visited the client in jail and had him sign the promissory note and mortgage deed on the same day. The notary witnessed the client's signature on the mortgage deed. Before entering into the business transaction with the client, the respondent did not advise the client to seek independent legal counsel and did not afford him a reasonable opportunity to do so. The client subsequently claimed not to have understood certain of the provisions of the mortgage.

The respondent's conduct in entering into a business transaction with a client without affording the client a reasonable opportunity to seek advice from independent legal counsel was in violation of Mass. R. Prof. C. 1.8(a). In mitigation, the respondent has discharged the mortgage.

The respondent was admitted to practice in 1978. He received an admonition for his misconduct.

ADMONITION NO. 14-13

CLASSIFICATIONS:

Failing to Act Diligently [Mass. R. Prof. C. 1.3]
Failing to Communicate Adequately with Client [Mass. R. Prof. C. 1.4(a) and (b)]

SUMMARY:

In October 2004, the respondent was retained to commence suit on behalf of a client against a former business partner. The client and his former partner had operated a real estate development business under oral agreements from 1988 until approximately 1999. The respondent filed suit in October 2004, filed an amended complaint in November 2004, and timely answered a counterclaim in March 2005.

In 2005, the respondent served requests for production of documents on the defendant and received responses, and in 2006, the defendant filed requests for production of documents, but the respondent did not respond. In 2007 and 2008, the respondent filed four assented-to motions to continue the pretrial conference, which was ultimately held in April 2008, and trial was scheduled for December 2008. After several continuances of the trial date, due to the efforts of the parties to settle the case, a date of March 22, 2010 was set.

Over the course of the proceedings, the lawyers and the parties met at least three times to discuss settlement, as well as mediation. The respondent and opposing counsel ultimately reported to the court prior to the trial date that they intended to arbitrate the matter. On March 15, 2010, the court issued an order for entry of dismissal *nisi* and ordered the parties to file an agreement for judgment or stipulation of dismissal by September 15, 2010.

The respondent and opposing counsel then took no further action. The respondent did not advise the client that the matter had been taken off the trial list, he did not pursue the mediation, and he did not notify the court of the status of the matter or file a motion to restore the case to the trial list by September 15, 2010. On September 27, 2010, the court issued a judgment of dismissal for failure to comply with the *nisi* order.

The client emailed the respondent in April and May 2011 requesting an update and asking that the respondent either pursue arbitration or set a trial date. The respondent replied to the second email that he would contact the client to discuss the next step, but he never did. Later in 2011, the client went to the court and discovered that the case had been dismissed.

The respondent, who was admitted to practice in 1973, received a private admonition in 1992 for neglect of a legal matter. *Private Reprimand No. PR 92-3*, 8 Mass. Att'y Disc. R. 272 (1992). In the current case, he lost track of the matter due in part to a busy trial schedule at the time. However, the complexity of the case, the number of parcels of land involved, and the oral nature of the agreements made it unlikely that either side could prevail, and the potential costs of litigation or mediation were high relative to the potential value of the case.

The respondent's conduct in failing to prosecute the case or pursue settlement or mediation was in violation of Mass. R. Prof. C. 1.3. The respondent's failure to keep the client reasonably informed about the status of the case or to explain the matter to the client so as to permit the client to make informed decisions was in violation of Mass. R. Prof. C. 1.4 (a) and (b). In mitigation, the respondent did not ever bill the client for his services.

The respondent received an admonition for his misconduct, conditioned upon having the Law Office Management Assistance Program (LOMAP) inspect and audit his law office practices and procedures.

ADMONITION NO. 14-14

CLASSIFICATION:

Obtaining Evidence in Violation of Legal Rights of Third Person [Mass. R. Prof. C. 4.4]

SUMMARY:

In February 2011, the respondent agreed to represent a client in a divorce. On March 7, 2011, the respondent filed a complaint for divorce on behalf of her client. The husband was represented by counsel. During the following year, the respondent became frustrated by the husband's delays in responding to discovery.

On March 2, 2012, husband was terminated from his position with his employer. He called his wife and informed her of the termination and that he planned to appeal it. He also told her that his employer would send a letter regarding the termination to the marital home, in which she resided.

A few days later, a letter arrived at the marital home addressed to husband from the husband's employer. The wife called the respondent to tell her that the letter had come. The respondent understood that the wife routinely opened mail that came to the marital home in the name of the husband. The respondent was also mindful that a pre-trial hearing was scheduled for March 20, 2012.

The respondent told her client that she could open the letter and instructed her to make a copy of it. The respondent was aware that she could gain access to the letter through discovery, but wanted a copy of the letter before the pre-trial date. By letter dated March 15, 2012, the respondent informed husband's counsel that her client had opened the correspondence and enclosed a copy of the termination letter.

The respondent's conduct of instructing her client to open the letter and make a copy of it as a way to circumvent the discovery process violated Mass. R. Prof. C. 4.4.

On January 16, 2013, the parties entered into a separation agreement, and a judgment of divorce nisi issued on January 23, 2013. No ultimate harm resulted from the respondent's actions. The respondent was admitted to the bar in 1992 and has no history of discipline. She accordingly received an admonition for her misconduct.

ADMONITION NO. 14-15

CLASSIFICATIONS:

Trust Account Commingling [Mass. R. Prof. C. 1.15(b)(2)]
Improper Method of Withdrawal [Mass. R. Prof. C. 1.15(e)(3)]

SUMMARY:

During a period of time from January 1, 2011 through April 30, 2014, the respondent failed to hold trust funds separate from personal or business funds and made multiple cash withdrawals from his IOLTA account. Specifically, in addition to the deposit and disbursement of client funds, the respondent kept excess personal funds in his IOLTA account. The respondent then withdrew these personal funds via cash withdrawals.

The respondent's conduct in maintaining excess personal funds in his IOLTA account and in withdrawing cash from an IOLTA account violated Mass. R. Prof. C. 1.15(b)(2) and (e)(3).

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

ADMONITION NO. 14-16

CLASSIFICATION:

Knowingly Disobeying Rules of Tribunal [Mass. R. Prof. C. 3.4(c)]

SUMMARY:

In 2008, the respondent was retained to represent a client as replacement counsel in an ongoing litigation concerning the client's purchase of a gas station. The fee agreement provided for a flat fee to be paid in increments, but an hourly fee if the representation was terminated before it concluded. The respondent accordingly filed his appearance in the litigation. He also reviewed the voluminous case files and communicated with opposing counsel. However, shortly thereafter, certain disagreements arose between the respondent and the client about the appropriate legal strategy in the case. As a result of those disagreements, the client terminated the respondent as his lawyer. At that point, the respondent had been paid $7,000 in legal fees.

Following his termination, the respondent returned the case files to the client. He also submitted a final bill claiming an additional $2,887.50 in legal fees on an hourly basis for services rendered. The client refused to pay and filed a demand for fee arbitration with the Boston Bar Association ("BBA").

An arbitration at the BBA followed. It resulted in a decision requiring the respondent to provide a refund of approximately $1,400 to the client, with payment due within 15 days. Notice of the award was sent to the respondent but he did not receive it and did not make any effort to check or to determine the outcome.

Four years later, the respondent was contacted by a lawyer for the client about the unpaid arbitration award. The respondent asked for additional time to make payment on the grounds that he was experiencing financial problems.

When no payment was forthcoming, the client decided to and did file a small claims action against the respondent. The respondent failed to appear at the trial and a default judgment was entered against him. The respondent was served with the judgment but made no payments.

The client subsequently filed a request for investigation with the Office of Bar Counsel. During the investigation that followed, the respondent provided the client with the refund called for by the BBA arbitration award.

By knowingly disobeying the arbitration award even after he was contacted by successor counsel and the small-claims judgment, the respondent violated Mass. R. Prof. C. 3.4(c).

The respondent, who was admitted in 2001 and has no prior discipline, received an admonition for his misconduct.

ADMONITION NO. 14-17

CLASSIFICATION:

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

SUMMARY:

The respondent consulted with a client about possible representation in criminal and civil matters. The respondent's duty of confidentiality to the prospective client arose as soon as he agreed to consider representing the client.

Some weeks later, the client called the respondent and made a threat of imminent harm to public employees. The respondent reported the threats to the police. The divulgence of the client's threats fell within Mass. R. Prof. C. 1.6 (b)(1), which allows an attorney to reveal confidential client information to prevent the commission of a criminal act that the lawyer reasonably believes is likely to result in death or substantial bodily injury.

When the situation became public, reporters contacted the respondent. The respondent shared confidential information with the reporters concerning the client's threats. No harm resulted. The respondent's divulgence, without consent, of confidential information to the reporters, violated Mass. R. Prof. C. 1.6(a), but resulted in no harm.

The respondent received an admonition for the misconduct, conditioned on attendance at a CLE program designated by bar counsel.

ADMONITION NO. 14-18

CLASSIFICATIONS:

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

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

Failure to Safeguard Client Property other than Funds [Mass. R. Prof. C. 1.15(b)(3)]

SUMMARY:

The respondent is a sole practitioner specializing in domestic relations law. In August 2012, the respondent agreed to represent a client in her divorce. In March 2013, the parties signed a separation agreement and the court entered a judgment nisi of divorce. After the divorce became final in May 2013, the respondent agreed to prepare and seek approval of two qualified domestic relations orders (QDROs), as set forth in the parties' separation agreement. On November 29, 2013, the respondent filed with the Probate and Family Court an assented-to motion to approve the two QDROs that he had prepared. The Court approved the QDROs, and mailed the signed orders to the respondent. The respondent received the original signed QDROs by early December 2013.

After receiving the original QDROs from the court, the respondent failed to promptly send the approved QDROs to the retirement plan administrators and misplaced the orders. Between the end of November 2013 and May 1, 2014, the respondent failed to reply to multiple telephone calls and emails from his client requesting information about the status of the QDROs. When he could not find the missing orders, the respondent did not undertake to have the court issue replacement orders.

On April 2, 2014, the client filed a request for investigation with bar counsel. After receiving notice of bar counsel's investigation, the respondent searched his office and found the misplaced original orders. On May 1, 2014, the respondent mailed the QDROs to the retirement plans, and wrote to the client to apologize for his lack of communication and his delay in processing the QDROs. By the end of June 2014, the retirement plan administrators confirmed that the two QDROs had been received, accepted and administered. The delay in providing the approved QDROs to the plan administrators did not result in any financial harm to the client, because the orders related back to the time of the divorce. The respondent did not charge a legal fee for his services in seeking approval of the two QDROs.

The respondent's failure to promptly send the approved QDROs to the plan administrators to secure their implementation violated Mass. R. Prof. C. 1.3 (obligation to act with reasonable diligence and promptness in representing a client). The respondent's failure to respond to telephone calls and emails from his client requesting information about the status of the matter for over four months violated Mass. R. Prof. C. 1.4(a) (obligation to promptly comply with reasonable requests for information from a client). The respondent's temporary loss of the orders violated Mass. R. Prof. C. 1.15(b)(3) (obligation to safeguard a client's property).

The respondent, who was admitted to practice in 1977 and had no prior discipline, received an admonition for his conduct. As a condition of the admonition, the respondent agreed to contact the Law Office Management Program (LOMAP) and obtain an assessment of his law office management practices.