



## **ADMONITION NO. 15-01**

### **CLASSIFICATIONS:**

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

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

### **SUMMARY:**

In February 2009, a client retained the respondent's firm to file a claim against three companies that were allegedly responsible for creating a hazard that caused the client to fall and sustain serious injuries. The client was working at the time of the injury and thus applied for and collected worker's compensation benefits.

The respondent filed third-party claims on behalf of the client against the three companies. Because the client had collected worker's compensation benefits, a worker's compensation lien automatically attached to any recovery on the claims. In addition, during the course of the litigation, the client obtained a \$10,000 loan from a litigation funding company. The respondent's firm was aware of the loan, and a partner of the firm had signed an agreement to repay the loan from the proceeds of any settlement or judgment.

In May 2012, the client died of injuries unrelated to those he had sustained in the 2009 fall. In November 2012, the client's wife became the personal representative of her late husband's estate and became the respondent's client for purposes of the litigation. Later that month, the respondent obtained settlement offers from all three defendants.

The respondent relayed the offers to the wife, now the respondent's client, but did not at that time inform her of the existence of the funding loan or the worker's compensation lien against the settlement. The respondent transmitted to the client a document created by his office, which set forth the amount of the settlement, the attorney's fees and costs to be deducted from the settlement, and

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the amount that would be received by the client. The document made no mention of the worker's compensation lien or the funding loan. The document inaccurately represented that, subject to a Medicare Lien "to be determined", the client would receive \$14,475.82. The client signed the settlement sheet and the releases and transmitted them to the respondent.

Although the respondent had the signed releases in hand by December 6, 2012, he did not cause them to be promptly sent to the defendants. Two were mailed on February 21, 2013; the third was not mailed until June 2013, and then only after that defendant's attorney contacted the respondent to ask why he had not received it.

In June 2013, the client learned that the total of the amount of the worker's compensation lien and the money due to the funding company exceeded \$14,475.82, and that she would therefore not receive any settlement funds. No amount was due to Medicare. Subsequently, the respondent negotiated the liens and agreed to reduce his fee so that the client obtained a recovery of approximately \$2000.

The respondent's conduct in failing to explain the proposed settlement to his client to the extent reasonably necessary to allow her to make an informed decision violated Mass. R. Prof. C. 1.4(b).

By failing to cause the releases signed by the client to be transmitted promptly to the defendants, the respondent failed to provide diligent representation to his client, in violation of Mass. R. Prof. C. 1.3.

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

## **ADMONITION NO. 15-02**

### **CLASSIFICATION:**

Failure to Take Reasonable Remedial Measures After Coming to Know of the Falsity of Material Evidence [Mass. R. Prof. C. 3.3(a)(4)]

### **SUMMARY:**

The respondent was an associate in a small firm. He handled a personal injury claim for a client of the firm injured in an auto accident. Suit was filed in the superior court shortly before the three-year limitations period. The defendant driver obtained summary judgment on the claim on the ground that he was a municipal employee acting within the scope of his employment at the time of the accident and that the plaintiff had failed to give timely presentment of the claim to the city as required by G.L. c 258, §4.

In opposition to the defendant's motion for summary judgment, the respondent had filed pleadings that asserted in various ways that the plaintiff had not been on notice that the defendant was a municipal employee. When the respondent made those representations to the court, he believed them to be true. In preparing for an appeal of the summary judgment, however, the respondent learned for the first time of a fax that had been received by the firm shortly after the accident. That fax contained the information that the defendant had been operating a municipal vehicle in the course of his employment at the time of the accident.

The respondent then informed his employer, the firm's owner, that he had become aware of the fax and that he could not work on the appeal because it would be based upon facts he now knew were not true. The employer asked him if he had believed the factual assertions to be true when he made them, and the respondent answered yes. The employer then incorrectly advised the respondent that he did not have to take any further action and further indicated that he, the employer, would handle the appeal. The employer in fact filed an appellate brief based on the proceedings in superior court and withdrew it prior to a decision only after this situation came to bar counsel's attention.

Mass. R. Prof. C. 3.3(b) provides that the duty to take remedial action after discovering that false evidence has been offered to a tribunal continues to the conclusion of the proceeding, including all appeals. In failing, while the appeal was

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pending, to take any further action to withdraw or correct the false assertions he had made to the superior court, the respondent violated Mass. R. Prof. C. 3.3(a)(4). In mitigation, the respondent was an employee of the firm, he withdrew from prosecuting the appeal, and he followed the employer's (albeit incorrect) advice in not taking any further action.

The respondent received an admonition for his misconduct, conditioned upon his attending an ethics course to be designated by bar counsel.

## **ADMONITION NO. 15-03**

### **CLASSIFICATIONS:**

No Written Fee Agreement [Mass. R. Prof. C. 1.5(b)(1)]  
Failure to Withdraw Fees [Mass. R. Prof. C. 1.15(b)(2)(ii)]  
Withdrawal of Fees without Accounting [Mass. R. Prof. C. 1.15(d)(2)]

### **SUMMARY:**

The respondent represented the wife in domestic abuse, criminal complaint and divorce proceedings from July of 2013 through January of 2014. The respondent failed to enter into a written fee agreement with his client for any of these matters. In connection with two of these cases, the respondent received retainers, which he deposited into his IOLTA account. On multiple occasions the respondent failed to give notice to his client of his withdrawal of fees from the account. In January of 2014, the respondent failed to withdraw his fee promptly from a retainer after it had been earned.

The respondent violated Mass. R. Prof. C. 1.5(b) by failing to enter into a written fee agreement with his client. Each time he withdrew his fees from his IOLTA account, the respondent violated Mass. R. Prof. C. 1.15(d)(2) by failing to provide his client with a written itemized bill showing the services he rendered, notice of the amount and date of the withdrawal, and a statement of the balance left in the account. The respondent violated Mass. R. Prof. C. 1.15(b)(2)(ii) by not promptly withdrawing his entire fee after it had been earned in January, 2014.

The respondent was admitted to the Massachusetts bar in 1982 and has no prior discipline.

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

## **ADMONITION NO. 15-04**

### **CLASSIFICATION:**

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

### **SUMMARY:**

The respondent's professional liability insurance policy lapsed in September 2013. The respondent failed to notify the Board of Bar Overseers within 30 days that his policy had lapsed, as required by S.J.C. Rule 4:02, § (2A)(a). On December 31, 2013, the respondent filed with the Board his annual registration statement and disclosed that he did not have professional liability insurance. The respondent's insurance was reinstated in July of 2014.

In 2014, a client asked the respondent to represent him and agreed to and did pay a flat fee of \$1,500. The respondent failed to provide the client with a written statement of the scope of the representation and the basis and rate of the fee.

In failing to inform the board within 30 days that his professional liability insurance had lapsed, the respondent violated S.J.C. Rule 4:02 § (2A) (a) and (c).

In failing to provide the client with a written statement of the scope of the representation and the basis and rate of the fee, the respondent violated Mass. R. Prof. C. 1.5(b)(1) as in effect after January 1, 2013.

The respondent was admitted to the Massachusetts bar in 2008 and has no prior discipline. He received an admonition for his conduct conditioned upon his attending a continuing legal education course designated by bar counsel.

## **ADMONITION NO. 15-05**

### **CLASSIFICATIONS:**

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

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

### **SUMMARY:**

A California real estate developer (Smith) was the personal affairs manager of a couple who resided in Taiwan. Through a power of attorney, the respondent represented the couple, who were tenants-in-common of a Massachusetts' condominium unit that was owned in common with a third owner. In August 2013, Smith paid \$750 to the respondent. At this time, the respondent was representing the couple in defending or negotiating a threat of a forced sale by the condominium's third owner. This fee was earned when received.

On January 27, 2014, the third owner filed a petition to partition the property in the Land Court. On or about March 3, 2014, the respondent entered his appearance in the Land Court and attended a case management conference. Shortly thereafter, Smith sent \$3,500 to the respondent upon the understanding that the respondent would represent the couple on an hourly rate basis in the litigation. The respondent accepted the retainer but did not set forth the basis or rate of the fee in any fee agreement or confirmatory letter. Further, the respondent deposited the entirety of the funds into his personal checking account without providing his clients with any itemization of time and services, in the expectation that the funds were, or would be, quickly earned. The respondent did not keep contemporaneous time records and it was therefore not possible to know what portion of the retainer was earned and what portion unearned at the time of deposit.

Ultimately, the parties agreed to a sale of the property and the respondent diligently negotiated with the third owner the value of his interest and set offs. On March 14, 2014, the parties stipulated in court to the sale and division of proceeds that required one of the clients to pay a sum to the third owner from his share of the net sale proceeds. On April 30, 2014, the property sold, and after discussion with Smith, the respondent took an additional \$9,500.00 from the net closing proceeds in payment for services rendered. The respondent did not provide his clients with any

itemization of time or services and Smith subsequently protested the total of the withdrawal. The respondent then placed the disputed amount into escrow, despite his claim that Smith had orally authorized the total deduction from the net sale proceeds.

The respondent worked about 50 hours on the matter and his usual hourly rate is \$275 per hour. Accordingly, bar counsel did not find that the fee collected was clearly excessive. However, the respondent's failure to reduce the basis and rate of the fee to writing violated Mass R. Prof. C. 1.5(b)(1) as in effect after January 1, 2013. The respondent's deposit of the entirety of a retainer in his personal account, without providing a bill for services totaling that amount or where a portion of the total was unearned at the time of deposit, is conduct in violation of Mass R. Prof. C. 1.15(b)(1).

The respondent is a sole general practitioner, admitted to practice in 1977, with no prior discipline. The respondent agreed to an assessment by LOMAP to improve his billing practices and agreed to resolve the fee dispute by fee arbitration. Accordingly, the respondent received an admonition.

## **ADMONITION NO. 15-06**

### **CLASSIFICATIONS:**

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

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

Improper Contingent Fee [Mass. R. Prof. C. 1.5]

### **SUMMARY**

The respondent filed a civil complaint in district court on behalf of a longstanding client on February 26, 2013 alleging breach of contract, breach of implied warranty and unfair and deceptive acts within the meaning of G.L. c. 93A. The complaint charged that the contract entered into by the parties in April 2006 had been breached by the defendant corporation on February 26, 2007.

The respondent failed to send the defendant a 93A demand letter and therefore failed to comply with the jurisdictional requirements of G.L. c. 93A. In addition, while the respondent filed the complaint before the statute of limitations expired on the contract and warranty claims, he failed to file the complaint during the four-year statute of limitations period applicable to 93A claims. The respondent also failed to effectuate service of the complaint and summons on the defendant within 90 days as required under the Mass. R. Civ. P. 4(j).

The respondent and the client had entered into an oral contingent fee arrangement, but the respondent failed to prepare a written contingent fee agreement for the respondent and client to sign.

The district court dismissed the complaint on August 21, 2013 for failure to make service. The respondent was unaware of the dismissal until the client brought it to his attention. On March 26, 2014, the respondent filed a motion seeking to vacate the dismissal, citing a family emergency that caused his failure to serve the summons and complaint or see the notice of dismissal. The defendant opposed the motion, a hearing was held, and the court denied the motion to vacate.

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In mitigation, the respondent experienced serious health problems before filing the civil case and a serious family emergency throughout much of 2013. In further mitigation, the respondent advised his client of the availability of malpractice insurance, and he notified his malpractice carrier. The respondent no longer handles any civil cases.

The respondent's failure to send a demand letter, file the 93A claim within the four-year statute of limitations period, or serve the summons and complaint upon the defendant within 90 days of filing the complaint was in violation of Mass. R. Prof. C. 1.1 and Mass. R. Prof. C. 1.3. The respondent's failure to enter into a written contingent fee agreement with his client was in violation of Mass. R. Prof. C. 1.5.

The respondent received an admonition for his misconduct.

## **ADMONITION NO. 15-07**

### **CLASSIFICATIONS:**

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

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

### **SUMMARY:**

In March 2012, a nonprofit tax-exempt corporation retained the respondent on an hourly fee basis to represent it in civil litigation involving a municipality. The corporation paid the respondent a retainer of \$7505 that was deposited into the respondent's IOLTA account on March 26, 2012. As the matter progressed, the respondent withdrew his fees from the retainer when earned. The respondent sought oral authorization for his payments from a representative of the corporation but did not send a written bill or confirmation of the amount of the withdrawals.

On or before September 21, 2012, the respondent was discharged and on that date, the respondent sent to the corporation a letter acknowledging the discharge and promising an accounting and a return of any unearned retainer, but did not follow up or send to the client any final bill or itemization of time. The respondent maintained the unearned portion of the fee (\$2,090.00) in his IOLTA account until the events described below.

The respondent did not hear from the corporation again until February 2014 when he received a letter asking for an itemization and a return of any unearned portion of the retainer as promised by the respondent in his letter of September 2012. The respondent received the letter but had reasonable concerns regarding the writer's authority to speak for the corporation or handle the funds. However, the respondent did not diligently investigate the matter or inquire further of the existing directors of the corporation. After a complaint was filed with bar counsel in June 2014, the respondent refunded the sum of \$2090.00. The corporation has not protested the amount of deductions for services rendered.

The respondent has taken steps to assure his billing practices are compliant going forward. He has sought assistance from a lawyer colleague and hired knowledgeable support staff.

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The respondent's withdrawal of earned fees without a written itemized bill or other written accounting, is conduct in violation of Mass. R. Prof. C. 1.15(d)(2). The respondent's failure to promptly refund the portion of the advance fee not earned when discharged, is conduct in violation of Mass. R. Prof. C. 1.16(d).

The respondent was admitted in 1964 and has no prior discipline. The respondent received an admonition for his misconduct.

## **ADMONITION NO. 15-08**

### **CLASSIFICATIONS:**

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

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

### **SUMMARY:**

The respondent was retained to represent a client who suffered injuries in a motor vehicle accident that occurred in December 2011. The respondent took over the case in early 2012 from the client's first attorney who was unable to continue the representation. Although the client understood that the case was a contingency fee case, the respondent never had the client sign a contingent fee agreement.

In 2012, the respondent submitted wage information, medical records, and a PIP application to the insurer. She met with the client in early 2013. Thereafter, although work remained, the respondent performed no further meaningful work on the matter. The client discharged the respondent in late 2013, and successor counsel began representing the client well within the statute of limitations period. The respondent has indicated that she will not seek attorney's fees in the matter.

The respondent's failure to diligently pursue the case was in violation of Mass. R. Prof. C. 1.3, and her failure to execute a written contingent fee agreement with the client was a violation of Mass. R. Prof. C. 1.5(c). The respondent received an admonition for her conduct.

## **ADMONITION NO. 15-09**

### **CLASSIFICATIONS:**

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

Failing to Seek the 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]

### **SUMMARY:**

On February 7, 2011, the clients, husband and wife, hired two respondents (respondent A and respondent B) to represent them for personal injuries and damages sustained on January 29, 2011 when a reflective pavement marker dislodged from the road and crashed through the windshield of the clients' car, striking the wife on the face in the passenger seat. The clients signed a contingent fee agreement with respondents A and B.

Pursuant to G. L. c. 81, § 18, the Defect In Way Statute, written notice of the defect must be served on the responsible entity, the Massachusetts Department of Transportation (MassDOT), within 30 days of the injury. The mailing of the notice within the statutory period is not sufficient; rather MassDOT must receive the notice within 30 days. Further, to recover against the Commonwealth for a road defect, it must appear that the defect was the sole cause of the injuries.

Respondent A sent a claim letter to MassDOT, but it was sent to the wrong address and not received by MassDOT within 30 days of the incident. By letter dated March 9, 2011, the assistant chief counsel of MassDOT informed respondent A of the correct address for DOT and the 30 day requirement. Respondent A did not send another claim letter to DOT until January 29, 2013. In February 2013, the assistant general counsel of MassDOT replied to the second claim letter and informed respondent A that the notice presented was untimely. Even if notice was proper, the maximum that can be collected for personal injuries is \$4,000 under the statute.

The respondents did not inform the clients of their failure to meet the statutory notice requirement. Instead, on January 29, 2014, the respondents filed a complaint in Middlesex Superior Court on behalf of the clients against MassDOT and the company that manufactured and installed the pavement markers.

In May 2014, the Attorney General, on behalf of MassDOT filed a motion to dismiss pursuant to Mass. R. Civ. P. 12(b)(6) and a memorandum in support. The grounds for this motion were that the claims were barred because the plaintiffs failed to give proper notice under G.L. c. 81, § 18. In addition, because the complaint alleged that the co-defendant company was liable for negligence and breach of warranties in connection with the sale and installation of the pavement markers, the road defect was not alleged to be the sole cause of the injuries and therefore, the plaintiffs therefore could not recover against the Commonwealth.

The respondents failed to file an opposition to the motion to dismiss. Without consulting the clients, the respondents signed a stipulation of dismissal on their behalf in June 2014. At about the same time, the action against the co-defendant company was dismissed by the court. The respondents did not notify the clients that their case was dismissed. In October 2014, the clients called respondent B for an update on the status of the case. The respondents then met with the clients and informed them that their case had been dismissed with prejudice. The respondents offered to pursue the clients' insurance coverage without charge. The clients subsequently collected damages under their insurance policy on their own.

By failing to timely file a claim alleging that the road defect was the sole cause of the clients' injuries, the respondents failed to provide competent representation and to act with reasonable diligence in violation of Mass. R. Prof. C. 1.1; 1.2(a) and 1.3. By failing to seek the clients' consent to dismiss the complaint and by failing to promptly notify the clients that their case was dismissed, the respondent violated Mass. R. Prof. C. 1.2(a) and 1.4(a) and (b).

The respondents were admitted to the Massachusetts bar in 1991 and have no prior discipline. The received admonitions, conditioned upon attending a CLE program recommended by bar counsel.

## **ADMONITION NO. 15-10**

### **CLASSIFICATIONS:**

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

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

### **SUMMARY:**

In July 2006, the client slipped and fell in a retail store. Due to her injuries, she underwent surgery in December 2006.

In February 2007, the client met with the respondent to discuss her case. On February 21, 2007, the respondent and the client executed a contingent fee agreement for her personal injury claim. The client told the respondent that she was seeking further treatment for her injuries and he put the case on hold.

In or about March 2008, the client underwent a second surgery related to her slip and fall injury. The client telephoned the respondent and informed him of this surgery in 2008. The respondent told the client that he would obtain her hospital records and increase the demand for pain and suffering. The respondent relocated his office in the fall of 2008. Thereafter, the respondent failed to communicate with the client.

In February 2014, the client telephoned the respondent for an update on the status of her case. The respondent did not remember the client or her case, and informed her that he would investigate and get back to her. The respondent could not locate the client's file, but reviewed what was left of his electronic file. The respondent's computer system crashed in 2011 and many files were lost. The only work that the respondent found on his computer relating to her case was a request for the client's medical records, and a partially drafted complaint.

By letter to the client dated February 11, 2014, the respondent informed the client that the statute of limitations expired in July 2009 and that as a result, she was precluded from obtaining relief from the retail store. The respondent also informed the client that she may have a cause of action against him and referred her to the Massachusetts Lawyer Referral Service. The respondent notified his malpractice insurance carrier and provided information regarding his malpractice carrier to bar counsel.

The respondent's lack of reasonable diligence and his failure to adequately communicate with his client is in violation of Mass. R. Prof. C. 1.3 and 1.4(a).

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The respondent was admitted to the bar in 1992 and has no prior discipline. The respondent received an admonition, conditioned upon attending a CLE program recommended by bar counsel.

## **ADMONITION NO. 15-11**

### **CLASSIFICATIONS:**

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

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

### **SUMMARY:**

In September 2012, the respondent agreed to represent a client in a claim for personal injuries he suffered as a result of a June 13, 2011, automobile accident in Waterbury, CT. The respondent and client entered into a contingent fee agreement and the client executed an authorization for the respondent to obtain his medical records.

The respondent is admitted to the bar in Massachusetts and Connecticut and accepts personal injury cases from both states. The statute of limitations for personal injury claims is two years in Connecticut and three years in Massachusetts. The respondent mistakenly tagged the client's file as a Massachusetts case in his office filing system.

The respondent sent initial correspondence to the insurance companies in October 2012 and had a telephone conversation with an insurance company claim adjuster in December 2012. Thereafter the insurance company placed calls to the respondent in April 2013 and again in May 2013 and left messages with the respondent's office staff, seeking any medical records for the client. The respondent failed to return their calls, and failed to forward the client's medical records to the insurance company. The statute of limitations passed on June 13, 2013. The respondent failed to contact the client prior to the expiration of the SOL. He had received some, but not all of the client's medical records by this date as the client was still receiving treatment.

The respondent paid the client an amount of money that was agreed to by the client and was based upon the amount the client could have expected to recover if the claim had been pursued. The respondent has also instituted a new color-coded filing system to prevent future problems with his Massachusetts and Connecticut cases.

By failing to file his client's personal injury claim before the expiration of the statute of limitations and failing to respond to the insurance company's inquiries, the respondent violated Mass. R. Prof. C. 1.2(a) and 1.3. By failing to contact the client regarding the status of the case, the respondent violated Mass. R. Prof. C. 1.4 (a) and (b).

The respondent was admitted to the Massachusetts bar on June 3, 2003, and has no prior disciplinary history. The respondent received an admonition for his conduct.

## ADMONITION NO. 15-12

### CLASSIFICATION:

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

### SUMMARY:

On June 11, 2001, the respondent became a member of the Massachusetts bar. She has since maintained an “active status” law license. The respondent is not and has never been a member of the Pennsylvania bar

In 2008, the respondent became the General Counsel of a company headquartered in Massachusetts. In or about May of 2011, the company relocated its headquarters to Philadelphia, Pennsylvania. In September of 2011, the respondent moved to Philadelphia to continue her work as General Counsel from the company’s new headquarters. Over the next three years, the respondent oversaw the company’s legal operations. In this role, her legal practice was limited to advising the company on issues under Massachusetts and federal law. Issues concerning Pennsylvania law were referred to outside legal counsel.

Under Pennsylvania law, every attorney not a member of the Pennsylvania bar who is employed by and regularly performs legal services in Pennsylvania for a business in that state must obtain a “Limited In-House Corporate Counsel License” from the Pennsylvania Board of Law Examiners. There is no exemption for attorneys who specialize in federal law and/or the law of another state.

Despite the requirements of Pennsylvania law, the respondent failed to apply for or obtain a “Limited In-House Corporate Counsel License” from the Pennsylvania Board of Law Examiners. By working as an in-house lawyer in Pennsylvania without a “Limited In-House Corporate Counsel License,” the respondent violated Mass. R. Prof. C. 5.5(a) [Unauthorized Practice of law].

The respondent has no disciplinary history. She received an admonition for the misconduct described above.

## **ADMONITION NO. 15-13**

### **CLASSIFICATIONS:**

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

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

### **SUMMARY:**

The respondent represented two cousins in their matters before the Immigration Court after both men were ordered removed to their home country of Guatemala. The respondent met with the men in the spring of 2008 and filed their applications for asylum, withholding of removal, and protection under the Convention Against Torture in April 2008, based on their membership in a particular social group. The respondent consolidated the clients' matters and they were scheduled for hearing in September 2009. The Immigration Court requires that all documents intended to be introduced at hearing be translated into English and filed thirty days before the hearing date.

In the time between the spring of 2008 and the hearing in the fall of 2009, the clients and their uncle provided the respondent with several documents describing attacks on the clients' family members in Guatemala, purportedly by members of a rival political group. Each of the clients also drafted a three-page statement summarizing the history of his relevant experiences and explaining the reasons why he was afraid to return to Guatemala. The respondent failed to facilitate the translation of any of those documents and failed to file them in the Immigration Court at least thirty days before the hearing.

The immigration judge denied the clients' applications and ordered both of them removed, citing numerous adverse credibility findings resulting from the clients' testimony in addition to the lack of corroboration. It is thus unclear whether the respondent's errors affected the outcome of the clients' case. One client voluntarily returned to Guatemala and the other remains in the U.S. pending his appeal based on the respondent's ineffective assistance.

By failing to prepare adequately for the clients' hearing and submit any corroborative information in support of their applications, the respondent violated Mass. R. Prof. C. 1.1 and 1.3.

In mitigation, over the period of time between when the respondent accepted these matters and the time of the hearing, the respondent was suffering from an abusive relationship with her former spouse, changed employers, and bore her second child.

The respondent has been a member of the Massachusetts bar since 2004 and has received no prior discipline. She received an admonition for her conduct.

## **ADMONITION NO. 15-14**

### **CLASSIFICATION:**

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

### **SUMMARY:**

The respondent is a sole practitioner engaged in a general practice, specializing in real estate, income tax preparation, and district court litigation. The respondent was representing a client in a series of real estate transactions for which he was also involved as a business associate. The respondent was assisting in the selection, financing, and legal work associated with the transactions, and the client was to hold title to the properties, and contract with outside parties to renovate, market, and sell the properties.

After a closing on February 24, 2014, for which the respondent acted as settlement agent, the respondent failed to withdraw his earned fees in the amount of \$15,832.29 from his IOLTA account, in violation of Mass. R. Prof. C. 1.15(b)(2)(ii). The respondent intentionally kept his earned fees in the trust account after the first closing, because he anticipated using them in part to fund the next transaction involving the client. Between February 24, 2014 and March 20, 2014, while the respondent's earned fees were on deposit in the IOLTA account, the respondent was also holding other client funds in the account. The respondent failed to hold his own funds separate from trust property in the account, in violation of Mass. R. Prof. C. 1.15(b).

This matter came to bar counsel's attention when the respondent failed to transfer sufficient additional funds from one IOLTA account to another IOLTA account prior to issuing a check in connection with the second closing, for which he was also acting as settlement agent. The respondent's check was returned for insufficient funds. The respondent promptly transferred the funds to the correct IOLTA account, and the check was then resubmitted and paid.

The respondent was admitted to practice in 1996. The respondent received an admonition for his conduct, on the condition that he attend a class on trust accounting designated by the Office of Bar Counsel.

## ADMONITION NO. 15-15

### CLASSIFICATIONS:

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

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

### SUMMARY:

In February 2013, the respondent was representing a client on a motion to suppress in the district court. After the conclusion of the hearing, the respondent instructed his client to order a tape of the proceedings at the clerk's office. Later that same day, the client informed the respondent via telephone that he had ordered the tape, but in fact, the client had failed to fill out a tape request form and pay the cost of \$50 for the recording.

The respondent made periodic inquiries to the clerk's office about the availability of the tape, but failed to determine if it had actually been requested by either reviewing the court's file or obtaining a tape request receipt from his client. On August 8, 2013, the respondent filed a handwritten motion to continue his client's trial, which he signed under the pains and penalties of perjury. In the motion, the respondent stated that his client had requested a taped copy of the hearing and that both he and his client had been informed by the clerk's office that the tape was unavailable and would be unavailable for some time due to staffing shortages. The motion to continue was allowed and the trial was rescheduled to November 1, 2013.

After receiving the continuance, the respondent made periodic inquiries at the clerk's office to see if any tape was ready, but never asked if the tape had actually been ordered. On October 31, 2013, the respondent again filed a motion to continue the trial date. The respondent prepared an affidavit, which he signed under the pains and penalties of perjury, stating that a tape of the February 2013 hearing had been ordered and that no tape had yet been produced by the clerk's office.

The respondent failed to ensure that his client had requested the tape by checking with the clerk's office or looking in the court's file prior to asserting the same in his affidavit under the pains and penalties of perjury. The respondent failed to act with reasonable competence and diligence, and made negligent misrepresentations to the court, in violation of Mass R. Prof. C. 1.1 and 1.3.

## ADMONITION NO. 15-16

### CLASSIFICATIONS:

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

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

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

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

### SUMMARY:

In late August 2012, the respondent agreed to represent a client in a contested divorce and child custody matter. The client had not had custody of her children since 2007, and had not had visitation with the children since 2009, when the Juvenile Court awarded sole custody to her husband. In April 2012, the client's husband filed and served the client with a divorce petition. The client did not file an answer. The Court issued an order setting a pre-trial conference for October 15, 2012. In July 2012, the Court issued a notice rescheduling the pre-trial conference to October 17, 2012.

At her initial meeting with the client on August 28, 2012, the respondent agreed to represent the client for a flat fee of \$1,500, which the client paid shortly thereafter. The respondent did not promptly file her appearance in the matter, obtain a copy of the court file, or assist her client in seeking permission to file a late answer to the divorce complaint. The respondent checked the on-line Court docket, and noted that the original pre-trial hearing date had been canceled. The new hearing date was not listed on the Court docket. The respondent told the client that she did not have to appear on the original date for the pre-trial conference, but did not explain that she would have to attend the rescheduled hearing. The respondent did not take any steps to ascertain the new date assigned for the pre-trial conference, or ensure that her client would be present.

The pre-trial conference went forward on October 17, 2012, in the absence of both the respondent and her client. A judgment of divorce nisi entered that day, granting the husband legal and physical custody of the parties' minor children, and allowing the client the right to reasonable visitation. The respondent filed her appearance in the matter in early November 2012, approximately eight weeks after she was retained. Shortly thereafter, the client informed the respondent that she had received the judgment of divorce. The respondent agreed to file a motion for relief from judgment, but failed to file the motion promptly. On January 11, 2013, the respondent served the opposing counsel with a Rule 60(b) motion for relief from judgment. The respondent filed the motion with the Court, but did not request a

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hearing date, and no hearing date was scheduled. On January 15, 2013, the respondent filed a complaint for contempt against the husband alleging that he had violated the divorce judgment by denying the client visitation rights. On February 14, 2013, the Court issued a temporary order adopting a stipulation of the parties on the contempt matter. In April 2013, the client engaged successor counsel to represent her. In 2014, the client filed a request for investigation with bar counsel. The respondent returned the client's entire fee.

The respondent's failure to promptly file her appearance and take other actions on the client's behalf, including ascertaining the hearing date; to advise her client to appear and appear herself at the pre-trial conference; and to promptly file a motion for relief from judgment, violated Mass. R. Prof. C. 1.1 (provide competent representation to a client), 1.2(a) (seek the lawful objectives of a client), 1.3 (act with reasonable diligence and promptness), and 1.4(b) (reasonably explain a matter to the client).

The respondent was admitted to practice in 2009, and had no prior discipline. The respondent received an admonition for her conduct, conditioned on her attendance at a continuing legal education course designated by bar counsel, and her agreement to contact the Law Office Management Program (LOMAP) and obtain an assessment of her law office management practices.

## ADMONITION NO. 15-17

### CLASSIFICATIONS:

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

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

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

### SUMMARY:

The respondent was engaged in a solo practice specializing in civil litigation. In 2011, the respondent agreed to represent a client in a wrongful termination case against her prior employer. The respondent and the client agreed that he would charge her a one-third contingent fee. The respondent did not prepare and have the client execute a written contingent fee agreement.

On November 21, 2011, the respondent filed a civil action in the Superior Court on behalf of the client against the employer. The parties engaged in discovery. In June 2013, the respondent received from the stenographer the original transcripts from three depositions taken in connection with the case. In December 2013, the client requested that the respondent provide her with copies of the deposition transcripts. The respondent did not provide the transcripts to the client.

In January 2014, the parties agreed to settle the case for \$25,000. The client executed an original settlement release and returned it to the respondent. The respondent received the settlement funds, and disbursed \$15,481 to the client, and \$9,519 to himself for his legal fees and expenses.

The respondent moved his office on February 1, 2014. In preparation for his move, the respondent packed a number of his files in boxes. On February 21, 2014, the client renewed her request for the deposition transcripts. The respondent agreed to retrieve her file from storage and send the transcripts to her. The respondent was unable to find the client's file. As a result, the respondent was unable to provide the transcripts to the client.

In March and April of 2014, the client continued to request that the respondent provide her with copies of the deposition transcripts. By an e-mail dated April 6, 2014, the client also requested that the respondent provide her with a complete copy of her file. The respondent notified the client that he was unable to comply with these requests because he could not find the file.

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In late April 2014, the respondent contacted the opposing counsel, who agreed to send him copies of the deposition transcripts. In June 2014, the respondent received copies of the deposition transcripts from the opposing counsel and forwarded them to his client.

In June 2014, the client renewed her requests to the respondent for her complete file. On about June 23, 2014, the respondent notified the client that he had found her file, but he did not send her the copies she had requested.

On August 7, 2014, bar counsel opened an investigation after receiving a request for investigation from the client. Bar counsel wrote to the respondent. Thereafter, on August 20, 2014, the respondent forwarded a copy of the file to the client.

The respondent's failure to use a written contingent fee agreement violated Mass. R. Prof. C. 1.5(c). The respondent's temporary loss of the client's file violated Mass. R. Prof. C. 1.15(b)(3), as in effect prior to July 1, 2015 (obligation to safeguard a client's property). The respondent's failure to send the client her file within a reasonable time after the client's request violated Mass. R. Prof. C. 1.16(e).

The respondent, who was admitted to practice in 1990 and had no prior discipline, received an admonition for his conduct on the condition that he attend a continuing legal education class identified by bar counsel.

## **ADMONITION NO. 15-18**

### **CLASSIFICATION:**

Improper Payments to Witnesses [Mass. R. Prof. C. 3.4g]

### **SUMMARY:**

The respondent represented a plaintiff in a personal injury case that went to trial in 2014. The respondent called a Certified Public Accountant with whom he was friendly as an expert witness to opine on the plaintiff's lost earning capacity as a result of the accident that was the subject of the suit. In the course of the conversation in which the respondent retained the expert, the expert suggested that he would review the case and testify, but that the respondent did not need to worry about paying him for his work unless the respondent won the case. The respondent did not refuse that offer and did not correct the witness's understanding as to their arrangement. Because the case ended in a verdict for the defendant, no payments were due or paid to the witness.

By acquiescing in the payment of compensation to a witness contingent upon the outcome of the case, the respondent violated Mass. R. Prof. C. 3.4(g), as in effect prior to July 1, 2015.

The respondent has been a member of the Massachusetts bar since 1990 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. 15-19**

### **CLASSIFICATIONS:**

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

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

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

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

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

### **SUMMARY:**

The respondent was a sole practitioner specializing in personal injury litigation and some estate planning. The respondent had no experience acting as a trustee for special needs trusts.

In October 2007, a disabled woman under the age of 65 inherited \$75,000 from a family friend. The woman was living in a subsidized apartment with her father, and had been receiving Social Security disability benefits for many years. The father contacted the respondent in January 2009 for advice about preparing a trust to receive and hold the funds for the purpose of preserving the woman's government benefits. The respondent recommended that they create an irrevocable (d)(4)(A) Supplemental Needs Trust for this purpose. With the agreement of the father, the respondent drafted the trust, which was executed by the father as donor on July 1, 2010. The trust named the father and the respondent as co-trustees. The disabled woman was named as the sole beneficiary. Under the terms of the trust, the funds were to be used to supplement, but not to supplant, whatever benefits and services the beneficiary might be eligible to receive. The trust stated that the funds were to be used in ways that would best enable the beneficiary to lead as normal, comfortable, and fulfilling a life as possible. The trust was to terminate on the death of the beneficiary.

The \$75,000 inheritance was paid to the respondent in two installments. The first installment, in the amount of \$9,500, was used to pay the respondent's legal fee. The second installment, in the amount of \$65,500, was paid to the respondent in July 2010 by a check from the executor of the estate. The respondent deposited the check to a non-interest-bearing checking account in the name of the trust. As a trustee, the respondent was obligated to invest the trust funds in suitable investments. He did not do so.

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Over the next five years, the only disbursement the respondent made from the trust account to or for the beneficiary was an initial payment of \$96.29 for bank fees and checks. The respondent made no additional payments to or for the benefit of the trust beneficiary, or for any purpose. From time to time, the beneficiary and advocates on her behalf sought access to the trust funds. The respondent did not pay the funds to the beneficiary because he was concerned that she could not manage the funds for herself. The respondent did not take steps to ascertain how the trust funds could be used to benefit the beneficiary, or make payments to third parties on her behalf. The respondent did not hold the trust funds in an interest-bearing account.

In September 2014, bar counsel opened an investigation of the respondent's handling of the trust matter. The beneficiary's father passed away on November 29, 2014. The respondent thereafter served as the sole trustee.

In June 2015, the respondent reimbursed the trust for his entire \$9,500 fee. In July 2015, the respondent filed a petition with the Probate Court seeking permission to resign as trustee, and to transfer all the trust assets to a MARC Special Needs Pooled Trust for the benefit of the beneficiary. Assuming the court approves the motion, the trust will be managed by a non-profit organization that provides planning and trust management services to individuals with special needs in Massachusetts and Rhode Island.

By holding the trust funds in a non-interest-bearing trust account for approximately five years, the respondent violated Mass. R. Prof. C. 1.15(e)(5). By failing to identify and make appropriate distributions to the trust beneficiary and to invest the trust funds in suitable investments, and breaching his fiduciary duties, the respondent violated Mass. R. Prof. C. 1.1, 1.3, 1.15(c), and 8.4(h).

The respondent was admitted to practice in 1980, and had no prior discipline. The respondent received an admonition for his conduct, conditioned on his attendance at a continuing legal education course designated by bar counsel.

## **ADMONITION NO. 15-20**

### **CLASSIFICATIONS:**

Knowingly Advancing Frivolous Claim or Defense [Mass. R. Prof. C. 3.1]

Improper Threat or Presentation of Criminal or Disciplinary Charges [Mass. R. Prof. C. 3.4(h)]

### **SUMMARY:**

On September 16, 2013, a New Jersey lawyer filed a civil suit in New Jersey Superior Court on behalf of her corporate client (Company A). The lawsuit alleged that the defendants, a corporate entity and an individual doing business as Company B, had failed to pay Company A for services rendered. The respondent represented the interests of an investor and managing member of Company B as its outside general counsel.

In October 2013, the respondent contacted the lawyer for Company A in an attempt to resolve the civil dispute. The parties were unable to resolve the matter.

On or about January 27, 2014, the New Jersey court entered a default judgment against the defendants in the civil lawsuit. The defendants did not contest the entry of the default judgment or move to vacate the default judgment or reopen the matter.

On September 2, 2014, the respondent sent an email to the plaintiff's lawyer, in which he threatened to file a motion with the Supreme Court of the United States of America seeking her disbarment unless she removed the default judgment. The respondent stated that if he was forced to file any motions in the case, he would seek her disbarment and significant attorneys' fees and costs. After the lawyer responded to the respondent's initial email, he sent her a second email on September 2, 2014, again threatening to petition the Supreme Court of the United States of America for her disbarment unless she dismissed the civil action and removed the judgment secured in that case. The respondent set a deadline of 6:00 p.m. on the following Friday for her to remove the judgment, or he would seek her disbarment. The respondent further stated, "Should you have any questions, please retain the service of a competent Supreme Court of the United States of America practitioner."

Mass. R. Prof. C. 3.4(h) prohibits a lawyer from presenting, participating in presenting, or threatening to present criminal or disciplinary charges solely to obtain an advantage in a private civil matter. To the extent that the defendants had a valid defense to the New Jersey civil action, the appropriate remedy would have been for the defendants to move to vacate or remove the default judgment and seek to present

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their defense. In addition, the respondent had no non-frivolous basis for filing a petition seeking the disbarment of the New Jersey lawyer with the Supreme Court of the United States. In these circumstances, the respondent's conduct violated Mass. R. Prof. C. 3.1 (prohibiting lawyers from asserting frivolous claims) and 3.4(h) (threatening to file disciplinary charges solely to gain an advantage in a private civil matter).

The respondent, who was admitted to practice in 1989 and had no prior discipline, received an admonition for his conduct on the condition that he attend a continuing legal education class identified by bar counsel.

## **ADMONITION NO. 15-21**

### **CLASSIFICATIONS:**

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

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

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

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

### **SUMMARY:**

The respondent represented a client in the arbitration of a personal injury claim arising out of a June 2008 motor vehicle accident. On June 10, 2009, the hospital sent the respondent a notice of hospital lien in the amount of \$23,606.98. On August 4, 2010, the hospital discharged the hospital lien.

The arbitration hearing took place on September 16, 2011. Prior to the arbitration, the respondent did not contact the hospital to confirm the amount of the outstanding lien. On January 9, 2012, the respondent wrote to the client to inform her that the arbitrator had awarded her \$100,000 for the injuries she sustained in the accident, the maximum that could be awarded pursuant to the defendant's insurance policy. The respondent, who was unaware that the hospital lien had already been discharged, informed the client that she was in the process of negotiating the outstanding medical liens and outstanding medical bills, which would reduce the amount of the settlement. She promised to advise the client of the progress of her negotiations once they were finalized. In fact, the respondent made no attempt to negotiate the hospital lien, which had already been discharged.

On May 23, 2012, the client signed a settlement statement prepared by the respondent. According to the settlement statement, the respondent was to receive \$33,921.58 for fees and expenses, and the client was to receive \$42,471.44. In addition, the respondent was to hold back \$23,606.98 from the client's share of the proceeds to pay the hospital lien dated June 10, 2009. On or about June 7, 2012, the respondent deposited the \$100,000 settlement check to her IOLTA account and paid the client \$42,471.44. The respondent held back \$23,606.98 from the client's settlement for the hospital lien. The respondent retained these funds in her non-interest-bearing IOLTA account.

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In June 2013, the client inquired about the status of the lien. The respondent informed the client that she had not been in contact with the hospital but that she was continuing to hold the funds in her client escrow account in the hope that the hospital would not seek payment of the outstanding lien and the monies then could be forwarded directly to the client. The client independently contacted the hospital and learned that the hospital lien had been discharged in August 2010. The hospital provided a copy of the discharge of lien to the client. The client did not send a copy of the discharged lien to the respondent.

In January 2015, after the client contacted the office of bar counsel and the respondent confirmed that the lien had been discharged, the respondent paid the client the \$23,606.98 that had been withheld from her settlement funds.

By failing to confirm whether the lien had been discharged prior to settlement, and to promptly deliver to the client funds that the client was entitled to receive, the respondent violated Mass. R. Prof. C. 1.1, 1.3, and 1.15(c). By holding the trust funds in a non-interest-bearing client trust account for two and one-half years, the respondent violated Mass. R. Prof. C. 1.15(e)(5).

The respondent was admitted to practice in 1993, and had no disciplinary history. The respondent received an admonition for her conduct.

## ADMONITION NO. 15-22

### CLASSIFICATIONS:

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

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

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

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

### SUMMARY:

In November 2014, an adult daughter retained the respondent to pursue her mother's claim for Veterans Administration benefits. Specifically, the daughter was a live-in caretaker for her elderly mother and sought monthly benefits on the grounds that her mother was in permanent need of regular aid and attendance. The respondent agreed to the representation on a *pro bono* basis. Beginning in the fall of 2014 and into January 2015, the respondent collected information and began to complete the VA forms. On or about January 17, 2015 and continuing to on or about August 13, 2015, the respondent failed to attend to the matter and failed to respond to numerous communications from the daughter asking for a status report. The mother died in August before any application was filed. There was then no potential for retroactive benefits.

The respondent was unable to give the matter the attention it required because of other commitments, but failed to notify the daughter that he could not handle the claim.

The respondent apologized to the daughter and reimbursed her a fair estimate of the monetary benefits that likely would have been received if the application had been timely filed. The respondent also contacted the Law Office Management Program for assistance and has agreed to follow their recommendations.

The respondent's failure to seek the client's lawful objectives, his failure to act with reasonable diligence and his failure to adequately communicate with his client, as described above, is in violation of Mass. R. Prof. C. 1.1, 1.2(a), 1.3 and 1.4, as in effect prior to July 1, 2015. The respondent violated the same rules for his continuing conduct on or after July 1, 2015.

The respondent was admitted in 2007 and has no prior discipline. He received an admonition for his misconduct.

## **ADMONITION NO. 15-23**

### **CLASSIFICATIONS:**

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

Failure to Withdraw Generally [Mass. R. Prof. C. 1.16(a)(1)]

### **SUMMARY:**

The respondent worked for a law firm from 2005 through late 2013. During this time, a client hired the law firm to represent her in a Complainant for Modification of Divorce against her ex-husband. The request for modification was based upon allegations of child abuse by the ex-husband. A member of the respondent's firm entered an appearance on behalf of the client. During the course of representation, the attorney of record for the client consulted with the respondent on a limited issue dealing with financial disclosures.

After leaving the law firm in 2013, the respondent started his own firm. In January of 2015, the respondent was retained by the ex-husband to represent him in a civil action filed against him by his ex-wife, the former client of the respondent's prior law firm. The civil action included allegations of child abuse. The respondent was aware and advised the ex-husband that his prior law firm had represented the former client. Forgetting his limited consultation on the case, he advised the ex-husband that he had never worked on the case. The respondent did not obtain the consent of the former client to represent her ex-husband.

In February of 2015, the former client's counsel informed the respondent she believed he had a conflict of interest. She made respondent aware of emails in which he communicated with the attorney who had handled the case at the prior law firm on behalf of the client. On March 11, 2015, the former client sent a letter to the respondent requesting he withdraw as counsel for her ex-husband. On March 20, 2015, new counsel for the client filed a Motion to Disqualify Defendant's Counsel. The respondent opposed the motion.

On April 14, 2015, the court allowed the motion to disqualify the respondent. The court found that the respondent violated Mass. R. Prof. C. 1.9 because the divorce action was substantially related to the civil matter and the former client's interests were materially adverse to those of her ex-husband in the civil matter. The respondent withdrew from representing the ex-husband in the civil matter.

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The respondent's conduct in representing a client in a matter adverse to a former client when the two matters were substantially related without his former client's consent violated Mass. R. Prof. C. 1.9(a), as in effect prior to July 1, 2015. The respondent's refusal to withdraw from the case when continued representation resulted in the violation of the Rules of Professional Conduct violated Mass. R. Prof. C. 1.16(a)(1), as in effect prior to July 1, 2015.

The respondent was admitted to practice in Massachusetts in 1996 and has no prior discipline. The respondent received an admonition for this misconduct, conditioned on his attendance at a continuing legal education course designated by bar counsel.

## **ADMONITION NO. 15-24**

### **CLASSIFICATION:**

Failure to Timely Communicate Basis of Fee [Mass. R. Prof. C. 1.5(b)(1)]

### **SUMMARY:**

In June 2014, the respondent was asked to represent a man who had been arrested on drug charges that had been bought in Lynn District Court. The respondent agreed to appear in court the next day and commence the representation upon payment of an initial \$10,000 retainer. When the respondent appeared at the courthouse the following day, he met with the client's girlfriend, who gave him \$9,000 on the client's behalf to commence the representation. The respondent agreed to accept that amount as a partial payment of his fee. At the same time, the respondent learned that the client had three other pending criminal matters for which the client needed legal representation. The respondent orally agreed to handle all four cases while indicating that his total fee for the representation would be at least \$35,000. Thereafter, the respondent represented the client on the various criminal matters for over three months, until the client retained new counsel and discharged the respondent in September 2014.

The respondent did not enter into a written fee agreement with the client or communicate the basis or rate of his fee in writing within a reasonable time after commencing the representation, in violation of Mass. R. Prof. C. 1.5(b)(1).

The respondent was admitted to practice in Massachusetts in 1986 and has no disciplinary history. He received an admonition for his misconduct.

## **ADMONITION NO. 15-25**

### **CLASSIFICATIONS:**

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

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

IOLTA Violation [Mass. R. Prof. C. 1.15(e)(6)]

### **SUMMARY:**

The respondent represented the buyer in his purchase of a residential property in Massachusetts. The respondent also acted as the settlement agent. The seller was the administrator of an estate. There was no lender, as the purchase was a cash sale.

At time of the sale on February 27, 2012, a fence and a shed belonging to a neighbor encroached on the property. The parties entered into an escrow agreement that stated that the respondent was to hold \$2,200 from the sale proceeds in escrow until May 31, 2012. The escrow agreement stated that the funds would be released to the seller upon the complete removal of the fence and shed. The escrow agreement further stated that if the fence and shed were not removed, then the buyer would be entitled to the escrow on May 31, 2012.

The fence and the shed were not removed by May 31, 2012. The respondent did not promptly deliver the escrow funds to the buyer on or about May 31, 2012. Between February 2012 and March 2015, the respondent held the escrow funds in his IOLTA account. The respondent did not hold the escrow funds in an interest-bearing account. During this period, the respondent received several inquiries from the buyer about the escrow funds, but did not make diligent efforts to obtain permission to disburse the funds in accordance with the escrow agreement.

On about March 9, 2015, the buyer contacted bar counsel. Bar counsel contacted the respondent, and then contacted the estate administrator, who had no objection to the release of the escrow funds. On March 11, 2015, the respondent paid the escrow funds to the buyer.

By failing to act with reasonable diligence and promptness in representing the buyer and in disbursing the escrow funds as escrow agent, and by failing to promptly deliver to the buyer the funds that the buyer was entitled to receive pursuant to the escrow agreement, the respondent violated Mass. R. Prof. C. 1.3 and 1.15(c). By holding trust funds in a non-interest-bearing client trust account for three years, the respondent violated Mass. R. Prof. C. 1.15(e)(5), as in effect prior to July 1, 2015.

The respondent was admitted to practice in 1985, and had no disciplinary history. In October 2015, the respondent attended a trust account training program designated by bar counsel. The respondent received an admonition for his conduct.

## **ADMONITION NO. 15-26**

### **CLASSIFICATIONS:**

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

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

### **SUMMARY:**

The respondent represented the wife in a divorce. Pursuant to an agreement between the parties, the wife remained in the marital home and the husband made the monthly mortgage payments. In the spring of 2015, the wife learned that the husband had lost his job, and she believed he had no income or assets from which to pay the mortgage. The wife informed the respondent of the husband's unemployment, her fear that he would not make payments and her desire to sell the house. She did not tell the respondent that any mortgage payment was late or unpaid or provide the respondent with any other information about the status of mortgage payments.

The respondent, on the wife's behalf, filed with the probate court a motion for permission to sell the marital home. In that motion, respondent stated, "on information and belief, the mortgage currently is not being paid by [the husband] and the parties are at risk of losing their equity in the marital home." In fact, the husband had made all mortgage payments timely. Although the respondent made the false assertion "on information and belief", he had inadequate information to make the assertion at all.

When the husband produced proof that all the payments were up to date, the respondent withdrew the motion.

By making an assertion to the court without adequate basis in fact to do so, the respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of Mass. R. Prof. C. 8.4(c); and conduct prejudicial to the administration of justice, in violation of Mass. R. Prof. C. 8.4(d).

The respondent received an admonition for this conduct.

## ADMONITION NO. 15-27

### CLASSIFICATIONS:

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

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

### SUMMARY:

In 2009, a father and daughter (the clients) overstayed their tourist visas. In 2012, the father's purported wife filed an alien relative petition seeking a concurrent adjustment to the father's status based on their marriage in the United States. The father had married without obtaining a divorce from his first wife, but he later remarried the same woman after his divorce became final. In March 2014, the Department of Homeland Security placed the father and daughter in removal proceedings after they determined the father's marriage in the United States was fraudulent. In July 2014, the Immigration Court continued the case to April 21, 2015.

In early August 2014, the clients employed the respondent to represent them at the scheduled immigration court hearing and, during the interim, to seek an adjustment to their respective statuses with the United States Customs and Immigration Services (USCIS). At the time, the respondent had virtually no prior experience in immigration matters, resulting in missteps, as follows.

In late March 2015, the respondent filed applications with the USCIS seeking adjustment of status. On April 7, 2015, the USCIS sent action notices to the respondent advising that the father's application had been rejected because of an incorrect filing fee and that the daughter's application had been rejected because of the filing fee problem and because it was not accompanied by a visa petition or approval.

On April 14, 2015, the respondent filed notices to continue and separate notices of stay with the Immigration Court. The notices misstated that the USCIS was currently reviewing the matter and that the court removal proceedings must be stayed pending the USCIS determinations.

The respondent's notices to continue did not comport with appropriate procedure because, as required under applicable immigration court rules, they failed to seek the court's permission to continue the hearing, to state a cause by which the court would consider continuance or to attach a proposed court order. In addition, the notices were untimely, such that a separate motion to accept late filing for cause shown was required. Finally, the respondent did not file form EOIR-28, notice of attorney or representative appearance, as a prerequisite to filing anything on behalf of his clients.

On or about April 17, 2015, the clients met with the respondent, who advised them that he had filed motions to continue with the court and that they did not have to appear at the scheduled hearing. This advice was incorrect. On April 21, 2015, the court issued an *in absentia* order for the clients' removal after they failed to appear. The notice sent to the clients stated that the order was final unless a motion to reopen was filed in accordance with Federal law.

On April 28, 2015, the clients met with the respondent to discuss the *in absentia* order. The respondent initially made good faith efforts to overturn the *in absentia* order by filing affidavits, but did not set forth proper grounds. The clients then obtained new counsel, who successfully filed a motion to reopen their cases based on ineffective assistance of counsel by the respondent. The matters are scheduled for further hearing on June 7, 2016. The respondent refunded the filing fee and his legal fees to the clients and reimbursed the clients for the legal fees paid to successor counsel to reopen the cases. Except for delay, there was no harm to the clients.

The respondent's conduct, in this matter constituted lack of competence and lack of diligence, in violation of Mass R. Prof. C. 1.1 and 1.3. The respondent was admitted in June 2010 and has no prior discipline. His missteps were based on lack of experience. Accordingly, the respondent received an admonition.