

## **ADMONITION NO. 16-01**

### **CLASSIFICATION:**

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

### **SUMMARY:**

On and after 2010, the respondent was working as an attorney in the state of New York. He remained as general counsel to one Massachusetts client, where he also was licensed to practice law. In 2014, the respondent failed to re-register and pay his annual registration fee to the Massachusetts Board of Bar Overseers. His license to practice law in Massachusetts was therefore administratively suspended

Following the entry of the order of administrative suspension, the respondent nonetheless sent two letters on behalf of a Massachusetts-based client. Each letter related to a collections matter in which his client sought to recover an unpaid invoice from a Massachusetts entity. The respondent sent the letters without thinking about his administrative suspension in Massachusetts. At the time, his New York license remained active.

The respondent's representation of the Massachusetts client while he was administratively suspended from practicing law in Massachusetts violated Mass. R. Prof. C. 5.5(a). The respondent, who has no prior disciplinary history, accordingly received an admonition.

## **ADMONITION NO. 16-02**

### **CLASSIFICATIONS:**

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

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

### **SUMMARY:**

In May of 2015, the respondent represented an incarcerated criminal client who was scheduled for a hearing in a Superior Court matter. The client was held in the courthouse lockup, and the respondent visited him after the hearing. Unbeknownst to court officers and without their permission, in violation of 103 CMR 483.13, the respondent brought the client food and beverages in his cell. Court officers later discovered the client in his cell eating and drinking, and contacted the respondent. The respondent admitted bringing the items to the client, and apologized for neglecting to obtain the court officers' permission.

The respondent's conduct in delivering items to a prisoner without the knowledge or permission of court officers was conduct in violation of Mass. R. Prof. C. 8.4(d) and (h).

The respondent was admitted to the bar in 2008 and has had no prior discipline. The respondent received an admonition for his conduct.

## ADMONITION NO. 16-03

### CLASSIFICATIONS:

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

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

### SUMMARY:

The respondent was retained by a client to represent him in a further appeal of his criminal convictions in return for a \$5,000 flat fee. Without first ascertaining whether the client's appellate rights had already been exhausted, the respondent proceeded to work on the client's matter. Three weeks after assuming the representation and collecting her fee, the respondent discovered that prior counsel had already filed an application for further appellate review, which had been denied, leaving the client with no basis for seeking any other appellate relief. The respondent informed the client that his appellate options had been foreclosed but that he might have grounds for filing a motion for a new trial, which she would prepare for an additional fee. At that point, the client terminated the respondent's services and requested a return of all unearned fees. The respondent did not promptly refund the client any money.

The respondent violated Mass. R. Prof. C. 1.1 by failing to ascertain the status of her client's case at the outset of the representation and violated Mass. R. Prof. C. 1.16(d) by failing to promptly refund her unearned fees.

The respondent has been a member of the bar since 2012 and has no history of prior discipline. During bar counsel's investigation she refunded the client \$2,500 in unearned fees.

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

## ADMONITION NO. 16-04

### CLASSIFICATIONS:

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

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

### SUMMARY:

The client, by written contingent fee engagement letter in June 2009, retained the services of the respondent to represent her in a breach of contract and collection claims against multiple defendants.

By way of background, in 2006, the client provided cleaning services in residential units owned by several business entities. The client submitted invoices to these entities, but the entities refused and failed to pay the full amount due for services provided.

On October 15, 2009, the respondent filed a civil suit against several defendants for payment of the client's outstanding invoices. The respondent prepared and attempted to serve the defendants via constable. However, several of the defendants' addresses were invalid. Further research yielded no results for new addresses on several of the defendant corporations. However, service was made on one defendant.

This defendant made an offer of \$2,500 to the respondent on behalf of the client, but the client declined the offer. By letter dated December 10, 2009, the respondent made a counter-offer of \$21,986. The defendant did not respond, and the respondent did nothing further on the case.

On May 20, 2010, the court entered a judgment of dismissal without prejudice pursuant to Mass. R. Civ. P. 4(j), for failure to make service within 90 days. The respondent took no action to reinstate the case and failed thereafter to respond to the client's attempts to obtain information. The respondent did send the client a letter in June 2015, informing her that her case had been dismissed.

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

The respondent was admitted to the bar in 1992 and has no prior discipline. In mitigation, during the relevant time period, the respondent was distracted by family health issues. The respondent has provided the client with her malpractice insurance information. The respondent received an admonition, conditioned upon attending a CLE program designated by bar counsel.

## **ADMONITION NO. 16-05**

### **CLASSIFICATION:**

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

### **SUMMARY:**

The respondent represented a client who several years earlier had been appointed the executrix of her mother's probate estate, of which the client was also an heir. The mother had received funds from a stock liquidation prior to her death and the client, in turn, received a portion of those funds, also prior to the mother's death. In the course of the client's subsequent tenure as executrix, the client's siblings, who were also heirs of the estate, sought to determine the disposition of the funds their mother had received from the stock liquidation.

In 2013, the respondent participated in the negotiation and drafting of an agreement among the heirs requiring the client to produce certain documents that would help account for the subject funds. Although the respondent and the client produced certain documents pursuant to that agreement, counsel for the other heirs requested additional documents in an effort to account for the funds from the stock liquidation. The respondent sought the client's permission to release such documents in furtherance of the client's fiduciary duties to the estate. The client refused to authorize the production of the additional documents, however, arguing that the other heirs were not entitled to such documents and that providing them would only lead to further expenses and delays in concluding the administration of the estate.

Because of the client's refusal to follow her advice, the respondent drafted and served on opposing counsel a motion to withdraw from the representation. The motion improperly disclosed the fact that the client had refused to authorize the release of the requested documents. Moreover, it called into question the client's motivations and intentions in refusing to turn over the additional documents. The respondent included such information based upon a mistaken interpretation of Mass. R. Prof. C. 1.6(b)(1) as in effect prior to July 1, 2015. This rule provides an exception to the general client confidentiality rule, Mass. R. Prof. C. 1.6(a), by authorizing a lawyer to disclose confidential information in order to prevent the commission of a fraudulent act. However, the rule did not apply to the respondent's situation because, among other things, the alleged fraud had already occurred and could no longer be prevented through disclosure of otherwise confidential information. Therefore the respondent's disclosures were in violation of Mass. R. Prof. C. 1.6(a).

Despite drafting and serving the motion to withdraw, the respondent subsequently assisted the client in resolving the remaining disputes among the heirs and concluding the administration of the estate. Consequently, the respondent's improper disclosure of confidential information did not substantially harm the client's legal or financial interests.

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The respondent has been a member of the bar since 2006 and has no disciplinary history. The respondent received an admonition for the above misconduct conditioned on attendance at a CLE program designated by bar counsel.

## **ADMONITION NO. 16-06**

### **CLASSIFICATIONS:**

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

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

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

Responsibilities Regarding Nonlawyer Assistants [Mass. R. Prof. C. 5.3(a), (b) and (c)]

### **SUMMARY:**

In June of 2012, the respondent was retained by a client to file for divorce from her husband, whose whereabouts were unknown. The respondent did not obtain an accurate residential address of the client. The respondent's legal assistant prepared the complaint for divorce and a motion for service by publication, mistakenly believing that the client was a resident of Quincy, Massachusetts because that is where the client reported that she last lived with her husband. The respondent signed these documents and had them filed with the Norfolk Probate and Family Court on November 12, 2012.

The motion for service by publication was allowed on December 11, 2012 and a summons was issued, returnable on April 25, 2013. The respondent did not timely complete service by publication. On July 23, 2013, the respondent's legal assistant filed a motion to extend time to service by publication, which was never acted upon, and the case was dismissed for lack of service on January 13, 2014. Notice of the dismissal was sent to the respondent.

Neither the respondent nor his legal assistant took any action to determine whether the motion to extend time to serve by publication had been allowed. The respondent also did not notify the client that the divorce case was dismissed. All of the work on this case was performed by the legal assistant and the respondent failed to adequately supervise her work or to make reasonable efforts to ensure that her conduct was compatible with the respondent's professional obligations. In March 2013, the client learned that the case had been dismissed and terminated the respondent's services.

The respondent's failure to maintain an accurate residential address for his client, to include the correct residential address in the divorce filings and to complete service by publication violated Mass. R. Prof. C. 1.1 and 1.3, as in effect prior to July 1, 2015. The respondent's failure to notify the client that her case was dismissed violated Mass. R. Prof. C. 1.4, as in effect prior to July 1, 2015. The respondent's failure to adequately supervise his legal assistant violated Mass. R. Prof. C. 5.3(a), (b) and (c), as in effect prior to July 1, 2015.

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The respondent was admitted to the bar of the Commonwealth in 2002 and has no disciplinary history. In mitigation, the respondent has now refunded the fee paid by the client. 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 and attending a CLE program recommended by bar counsel.

## **ADMONITION NO. 16-07**

### **CLASSIFICATION:**

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

### **SUMMARY:**

In 2003, the respondent was named a successor trustee of an irrevocable family trust he had drafted in 1994. The primary beneficiary was an elderly woman whose four adult children were residuary beneficiaries of the trust.

In 2006, the respondent's firm prepared and filed the trust's income tax returns for the 2005 tax year. After that, the respondent believed that the children of the primary beneficiary had decided that they would have someone else prepare the tax returns going forward. Each year between 2007 and 2011, the respondent sent the financial statements and Form 1099s he received to one or more of the children of the primary beneficiary or to the CPA who had prepared the 2004 return. The respondent took no further steps to assure that the tax returns for those years were prepared and filed and any taxes paid, and in fact no returns were filed for those years. In 2012, after the primary beneficiary died, her children realized that the trust's income tax returns had not been filed since 2006.

The respondent's failure to ensure that the trust's income tax returns were filed each year violated Mass. R. Prof. C. 1.3 (attorney has an obligation to act diligently), as in effect prior to July 1, 2015. In mitigation, there was some confusion among the adult children about responsibility for their mother's financial affairs.

The respondent has been a member of the Massachusetts bar since 1981 and has received no prior discipline. He received an admonition for his conduct.

## **ADMONITION NO. 16-08**

### **CLASSIFICATION:**

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

### **SUMMARY:**

Between May and December of 2015, the respondent represented an incarcerated criminal client. The respondent was retained by the client's girlfriend, and she paid him a \$2000 retainer. Prior to being retained, the respondent provided the client with a copy of the search warrant and affidavit in his case, but did not meet with him. After being retained, the respondent first met with the client in the courthouse lockup on the date of his first court appearance in the case. In the ensuing five months, the respondent attended four court dates for the client's case to which the client was not transported. During this period of time, the respondent failed to visit or directly communicate with the client in person or in writing, with the exception of a brief conversation while the respondent was on his way to visit another client in the same institution.

Also during this period, the respondent received a letter from the client, complaining that the respondent never answered his phone and did not adequately communicate with him or visit. The respondent did not answer the letter. The respondent further assured the client's girlfriend that he would send the client all case materials, which he did not do.

When contacted by bar counsel, the respondent ultimately met with the client and provided him with the requested documents. He withdrew shortly thereafter, and the client has obtained new counsel. The respondent returned the entirety of his retainer upon withdrawing.

The respondent was admitted to the bar in 1990 and has had no prior discipline. His failure to adequately communicate with his client was conduct in violation of Mass. R. Prof. C. 1.4(a).

In aggravation, the respondent was cautioned by bar counsel in 2011 regarding a matter involving similar facts.

The respondent received an admonition for his conduct.

## **ADMONITION NO. 16-09**

### **CLASSIFICATION:**

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

### **SUMMARY:**

The respondent was retained in April 2013 to represent a client in regard to the probate estate of her uncle, who died in November 2012. Pursuant to the terms of the decedent's will, the client was in line to be appointed executrix and ultimately to inherit the bulk of her late uncle's estate.

From the outset of the representation, the respondent was aware that there were significant title issues encumbering the principal asset of the estate, which was a house the decedent had owned along with his late brother. Because the estates of the deceased brother and certain other relatives had never been probated, the respondent was aware that additional court proceedings would need to be commenced in order to establish clear title to the house so that it could be sold as part of the administration of the estate.

The respondent served as the client's counsel for approximately eighteen months. During that time, he filed a petition to probate the decedent's will, succeeded in getting his client appointed as executrix, and assisted her in the marshaling of the decedent's financial assets. However, he failed to exercise diligence in regard to establishing clear title to the real estate. With respect to that issue, the respondent's work was limited to identifying the names of deceased relatives of the client for whom additional probate proceedings would need to be brought and obtaining an independent title examination on the property.

Because of the respondent's lack of progress in the case, the client terminated the representation in November 2014. The client suffered no significant harm as the result of the respondent's neglect.

The respondent's failure to take prompt action to obtain a resolution of the title issues on the decedent's property violated Mass. R. Prof. C. 1.3. In mitigation, he refunded a substantial portion of the fees he received during the representation and relinquished any claim to further compensation in connection with the matter.

The respondent has been a member of the bar since 1997 and has no record of prior discipline. He received an admonition for his conduct.

## **ADMONITION NO. 16-10**

### **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]

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

Withdrawal Without Protecting Client [Mass. R. Prof. C. 1.16d]

### **SUMMARY:**

In late 2013, the respondent began representing a client whose deportation had been ordered *in absentia* many years earlier. The client wanted to reopen the proceedings and seek adjustment of status. The respondent moved to reopen on the client's behalf, but the grounds asserted had little chance of success, and the motion was denied as insufficiently substantiated. The respondent filed a timely notice of appeal with the Bureau of Immigration Appeals (BIA) and indicated in the notice his intention to submit an appellate brief. He subsequently obtained a briefing extension. Two weeks before the extended briefing deadline, the respondent notified the client that he was terminating the representation, informed the client of the due date for the brief, and advised the client to get another attorney. The appeal was summarily dismissed for want of an appellate brief. The client likely would not have prevailed on appeal in any event due to deficiencies in the motion.

The respondent's failure to file a sufficiently supported motion to reopen the proceedings violated Mass. R. Prof. C. 1.1 and 1.3. His termination of the representation without submitting a brief or allowing adequate time for the substitution of new counsel before the briefing deadline violated Mass. R. Prof. C. 1.16(d) as then in effect.

In another case, the respondent was engaged in the fall of 2014 to handle a business matter for a new client. He made an oral agreement for representation on an hourly basis. The representation was terminated several months later.

The respondent never entered into a written fee agreement in the second case or communicated the basis or rate of his fee in writing to the client within a reasonable time after commencing the representation. His failure to do so violated Mass. R. Prof. C. 1.5(b)(1) as in effect from and after January 1, 2013.

The respondent had no history of discipline. In the immigration case, the client was not precluded from filing further motions to reopen, and he hired new counsel who developed alternate grounds for relief. There was no harm to the client in the second case. The respondent made full fee refunds to both clients. He received an admonition for his misconduct, conditioned on his attendance at a CLE course acceptable to bar counsel.

## **ADMONITION NO. 16-11**

### **CLASSIFICATION:**

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

### **SUMMARY:**

In August of 2004, the respondent represented the buyers and lender in the purchase of an investment property. The buyers were husband and wife and the respondent was a long-time friend of the husband.

On the day of the closing, the husband informed the respondent that his wife could not attend the closing. The respondent was aware that the buyers' child was extremely ill and assumed this was the reason the wife could not attend. Because of his friendship with and trust in the husband, the respondent gave the closing documents to the husband to bring to his wife for signature.

The husband returned the documents to the respondent later the same day and represented that his wife had signed and/or initialed the documents. The respondent notarized the wife's signatures on the documents and forwarded the documents to the lender. In fact, the wife had not signed the documents.

The respondent believed in good faith that the wife's signature was genuine. There was no harm to the lender as a result of the transaction. The wife learned of the transaction years later in connection with their divorce. As part of the divorce settlement, the husband received sole title to the property and assumed full responsibility for the mortgage.

By notarizing the signature of a person who was not present before him, the respondent violated Mass. R. Prof. C. 8.4(c). The respondent was admitted to the bar in 1997 and had no prior discipline. The respondent received an admonition for his misconduct.

## **ADMONITION NO. 16-12**

### **CLASSIFICATIONS:**

Failing to Communicate Adequately with Client [Mass. R. Prof. C. 1.4(a) and (b)]  
Improper Disclosure of Confidential Information [Mass. R. Prof. C. 1.6(a) and (b)]  
Client Under Disability [Mass. R. Prof. C. 1.14(a), (b) and (c)]  
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)]

### **SUMMARY:**

In October 2013, the respondent agreed to represent a client in her divorce matter. When the respondent took over the representation, a trial date had already been set for early February 2014.

In early January 2014, the client was experiencing serious health problems due to the stress of her divorce case. On the morning of January 20, 2014, the client sent an email to the respondent with a subject line that read "[divorce] matter over; please stop all work." In the email, the client instructed the respondent not to go to court the following day for a scheduled motion hearing, to notify the opposing counsel, and not to do any more legal work. The client told the respondent that her health was compromised and she had very little money left to risk in a legal battle, so she was going to negotiate a settlement with her husband. The client sent a copy of the email to her husband.

During the day on January 20, 2014, the respondent and her associates attempted to reach the client by telephone and email, but were unable to do so. Fearing that the client's ability to make adequately considered decisions in connection with the representation was impaired, and that the client was at risk of imminent substantial financial harm if she settled the case on her own, the respondent prepared a motion to appoint a guardian ad litem (GAL) for a mentally incompetent plaintiff pursuant to M.G. L. c. 208, Sec. 15. The respondent requested that the court either appoint a GAL for the client, or order the client to undergo a psychiatric evaluation to determine whether a GAL was necessary. In the motion, the respondent disclosed more confidential information than was reasonably necessary to protect the client's interests. See Mass. R. Prof. C. 1.14(c).

The respondent did not notify the client that she was planning to appear in court that day, did not send her a copy of the GAL motion by email or otherwise, and did not consider less intrusive alternatives to the filing of the GAL motion.

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On January 21, 2014, the respondent's associate appeared in court without notice to the client, and argued the motion for appointment of a guardian ad litem. On January 24, 2014, the judge denied the motion to appoint a GAL.

By revealing confidential information in the motion that did not qualify for an exception set out in Mass. R. Prof. C. 1.6(b) and 1.14(c), the respondent violated Mass. R. Prof. C. 1.6(a), as in effect prior to July 1, 2015. By failing to seek less intrusive alternatives to requesting the appointment of a GAL for her client, the respondent violated Mass. R. Prof. C. 1.2(a), and 1.14(a) and (b). By failing to communicate to her client that she was planning to file the GAL motion, the respondent violated Mass. R. Prof. C. 1.4(a) and (b), as in effect prior to July 1, 2015.

The respondent was admitted to practice in 1978, and had no disciplinary history. While the respondent revealed more client confidences than were reasonably necessary to protect the client, the respondent was not motivated by an intent to harm the client, or by the respondent's own personal interests. Essentially the respondent was acting in good faith under what she believed to be exigent circumstances. In mitigation, the respondent agreed to waive substantial unpaid legal fees. The respondent received an admonition for her conduct, on the condition that she attend a continuing legal education course designated by bar counsel.

## ADMONITION NO. 16-13

### 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(a) and (b)]

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

### SUMMARY:

On or about November 29, 2010, the client was a passenger on an MBTA bus when a motor vehicle hit the bus. The client was treated at Children's Hospital in Boston on the day of the accident. He later had some follow-up orthopedic visits and incurred medical bills for which he had no health insurance or other coverage.

On December 2, 2010, the respondent agreed in writing to represent the client in a claim for personal injuries sustained in the accident.

On June 1, 2011, the respondent sent a letter of representation to the MBTA at 10 Park Plaza in Boston, MA. In the letter, he stated he would send appropriate documentation including but not limited to medical bills and/or a demand letter. The respondent, however, never served a demand letter and did not forward any medical records or other documentation to the MBTA. The respondent did not present the client's claim to the MBTA within two years of the date of the accident, in the form required by G.L., c. 258, sec. 4 (the Massachusetts Tort Claims Act).

Beginning in 2011, the client was incarcerated. He did not have a telephone number at which he could be reached. The respondent did not hear from the client for an extended period. He did not attempt to write to the client at his mother's house, the address of which the client had provided to him. Instead, without notifying the client, the respondent determined to terminate the representation.

The client's claim against the MBTA expired on November 29, 2012. The client's claims against the driver of the other vehicle expired on November 29, 2013.

By failing to make a timely claim on behalf of the client, the respondent violated Mass. R. Prof. C. 1.1, 1.2(a) and 1.3.

By failing to attempt through available means to communicate with his client about the client's claim, the respondent violated Mass. R. Prof. C. 1.4(a) and (b).

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By terminating the representation with taking adequate steps to protect the client's interests, the respondent violated Mass. R. Prof. C. 1.16(d).

The respondent was admitted to the Massachusetts bar on December 1, 2006. He has no prior discipline and made restitution to the client. The respondent received an admonition for the misconduct described above.

## ADMONITION NO. 16-14

### CLASSIFICATIONS:

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

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

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

### SUMMARY:

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

In the first matter, the respondent was retained to represent a client in criminal matters. The respondent ultimately represented the client in seven criminal matters in and after June 2013 and received fees totaling \$6,300. However, in violation of Mass. R. Prof. C. 1.5(b), the respondent failed to provide the client with a fee agreement or otherwise communicate the basis for his fees in writing within a reasonable time after commencing the representation.

In the second matter, the respondent was retained in September 2013 to represent a former client in seeking to have the records of his dismissed criminal case sealed. The respondent quoted the client a flat fee of \$2,000 for this representation. Of that amount, it was agreed that \$1,000 would be paid upfront and the other \$1,000 would be paid when the work was completed.

After the respondent received the initial \$1,000 payment and undertook the representation, the client and his family moved abroad.

Between September 2013 and January 2015, the client sent numerous emails to the respondent requesting updates on the status of the matter and complaining about the dearth of communication from the respondent. The respondent did not adequately reply to his client's communications, thus violating Mass. R. Prof. C. 1.4(a). Moreover, without making adequate inquiry of the client, the respondent assumed that he did not intend to return to the United States to appear for a hearing on the motion to seal. As a result, the respondent generally failed to exercise reasonable diligence in concluding the representation, thus violating Mass. R. Prof. C. 1.3.

The respondent was admitted to practice in Massachusetts in 1985 and has no disciplinary history. He received an admonition for his misconduct.

## **ADMONITION NO. 16-15**

### **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]

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

### **SUMMARY:**

In October 2013, the client, a long-time employee of a corporation, was terminated from his position after an extended medical leave of absence. The client is a family friend of the respondent. Shortly after receiving the termination letter, the client saw the respondent at a social gathering, and they discussed the client's employment issue and agreed to meet at the respondent's office.

At this meeting, the respondent advised the client that they could write a letter to the company requesting that he be reinstated to his position or receive a severance package, or file a claim with either the Massachusetts Commission Against Discrimination (MCAD) or the Equal Employment Opportunity Commission, or do nothing. The client asked the respondent, and the respondent agreed, to draft a letter to his former employer. The parties did not enter into a fee agreement because the respondent was not seeking payment.

By letter dated December 11, 2013, the respondent advised the company that he represented the client and that the client was seeking reinstatement to his former position or a severance package calculated based on his years of service. In January 2014, the company declined the respondent's requests. Thereafter, the respondent took no further steps to contact the company. The client made several requests seeking information on the status of his case, but the respondent failed to reply.

A few months later, the client and the respondent met and discussed further steps. The client requested that the respondent file a claim with the MCAD. The respondent filed a walk-in claim at the Boston office of the MCAD, but did nothing further in the matter. Despite numerous telephone messages and emails from the client about the status of his case, the respondent did not reply to the client's request for information.

Several weeks or months later, the respondent at the client's request did check the status of the MCAD claim and learned that there was no claim on file. The respondent told the client that the MCAD had misplaced his complaint. After the respondent discovered that MCAD had misplaced the complaint, he took no further

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action on behalf of the client. The client thought that the respondent was still representing him and that the respondent would refile the complaint. As a result, the client did not hire other counsel and the time period to file the complaint lapsed.

The respondent's failure to provide competent and diligent representation and his failure to adequately communicate with his client is in violation of Mass. R. Prof. C. 1.1, 1.3 and 1.4(a).

The respondent was admitted to the bar in 1999 and has no prior discipline. The respondent received an admonition, conditioned upon attending a CLE program recommended by bar counsel.

## ADMONITION NO. 16-16

### CLASSIFICATIONS:

Failing to Communicate Adequately with Client [Mass. R. Prof. C. 1.411]

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

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

### SUMMARY:

The respondent represented a client in matter for which the respondent requested a retainer of \$2500 against which, according to the parties' written fee agreement, the respondent would bill at an hourly rate. The respondent began working on the matter before he received the retainer.

When he received the retainer, the respondent believed he had earned the bulk of the retainer and would quickly earn the rest. In fact, the respondent had only earned approximately half of the funds when he received them. The respondent deposited the client's retainer funds into his personal account. The respondent did not, at that point, provide the client with an itemized bill for the services rendered.

The relationship between the client and the respondent became strained. The respondent stopped responding to the client's calls. Eventually, the client called the respondent and left him a voicemail in which she terminated his services, demanded an itemized bill and the return of her unearned funds. The respondent promptly produced his invoice. The respondent's invoice showed a credit balance, but he did not refund the unearned funds with the invoice. The client mistook the invoice as a demand for payment and complained to bar counsel. The respondent promptly paid the credit balance after the complaint was filed.

By failing to deposit the retainer check into his IOLTA account, the respondent violated Mass. R. Prof C. 1.15(b)(2)(ii). By failing on or before the date he paid himself to send the client in writing an itemized bill, the respondent violated Mass. R. Prof. C. 1.15(d)(2). By failing to respond to the client's requests for information, the respondent violated Mass. R. Prof. C. 1.4(a) as in effect prior to July 1, 2015 (now Mass. R. Prof. C. 1.4(a)(4)).

The respondent was admitted to the bar of the Commonwealth on December 17, 1991. He has no history of discipline. He received an admonition for the above misconduct.

## ADMONITION NO. 16-17

### CLASSIFICATIONS:

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

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

### SUMMARY:

Between January 31, 2013, and May 20, 2014, the respondent accepted flat fees in three separate and unrelated criminal matters. Thereafter, the respondent failed to return the unearned portion of the fees when he was terminated before completing the work he had agreed to do.

In the first matter, the respondent was retained to review a client's murder conviction and give an opinion relating to the viability of an appeal or a motion for a new trial. The respondent hired an experienced criminal defense attorney to assist him in the matter. Together, they did substantial work in the form of interviews and research relating to a motion for a new trial. However, the respondent did not obtain or review the trial transcript, which was necessary to determine the viability of an appeal. The respondent's failure to review the transcripts violated Mass. R. Prof. C. 1.3. The client was not harmed as appointed appellate counsel later pursued his appeal.

The client terminated the respondent's representation in 2014 and sought a refund. In violation of Mass. R. Prof. C. 1.16 (d), the respondent failed to refund the unearned portion of his fee to the client until after a complaint was filed with bar counsel.

In the second and third matters, the respondent was retained to represent clients in two complex criminal matters. In each case, the respondent was terminated after completing significant work, but prior to finishing the agreed-upon work. In each case, the respondent initially refused to return the unearned portion of his fee, in violation of Mass. R. Prof. C. 1.16(d),

In mitigation, after complaints were filed with the Office of Bar Counsel, the respondent made refunds in appropriate amounts to each of the clients. He now understands his obligation to refund the unearned portion of any flat fee on which the agreed-upon services are not completed.

The respondent was admitted to the Massachusetts bar on December 20, 1989. In 1994, the respondent was suspended for one year for a criminal conviction arising from conduct outside the practice of law. Given the age and unrelated nature of the prior sanction, and the fact that the clients have been repaid, the respondent received an admonition for his conduct.

## **ADMONITION NO. 16-18**

### **CLASSIFICATION:**

Conflict Directly Adverse to Another Client or from Responsibilities to Another Client or Lawyer's Own Interests [Mass. R. Prof. C. 1.7(a)(2)]

### **SUMMARY:**

In 2003, the respondent prepared a will for a client who was a long-time friend of the respondent's ex-spouse. In accordance with the client's instructions, the respondent drafted the will so as to name the client's niece and the respondent's ex-spouse as co-executors. The will also contained dispositive provisions that left the client's real estate and some of the client's personal property to the respondent's ex-spouse. The client's niece, church and other parties were also named as beneficiaries of the client's personal property.

In 2005, the client sold the client's home to the respondent's ex-spouse for \$250,000. The client took back a \$50,000 mortgage from the respondent's ex-spouse, who paid the remainder of the purchase price to the client in cash.

In September of 2007, the respondent's ex-spouse borrowed \$25,000 from the respondent. The loan was secured by a mortgage on the respondent's ex-spouse's house, which was purchased from the respondent's client in 2005. The respondent's 2007 mortgage was subordinate to her client's 2005 mortgage.

In February of 2010, the client asked the respondent to prepare a new will, which the respondent did. Again in accordance with the client's instructions, the respondent drafted a will naming the client's niece and the respondent's ex-spouse as co-executors of the client's estate. As before, the respondent's ex-spouse, the niece and others were named beneficiaries of the client's personal property. This time, however, the will contained a new provision stating that, "I forgive any indebtedness owed to me by [respondent's ex-spouse]..., especially any mortgage related indebtedness, if any there be, upon my death". On the same day that the client signed the new will, the respondent had the client execute a discharge of mortgage, which the respondent then placed in the respondent's files.

When the respondent prepared the client's 2010 will and the discharge of mortgage, the respondent did not inform the client of the respondent's own personal interest in the matter or explain that this new provision would directly benefit the respondent whose mortgage was subordinate to the client's. The respondent did not obtain the client's informed consent to waive this conflict.

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The client died seven months later in September of 2010. In 2014, the respondent voluntarily discharged the respondent's mortgage to enable the respondent's ex-spouse to refinance the indebtedness on the property. In 2015, the respondent's ex-spouse subsequently sold the property and repaid the respondent in full the loan that the respondent had made to the ex-spouse.

The respondent violated Mass. R. Prof. C. Rule 1.7(b), as in effect prior to July 1, 2015 (now Mass. R. Prof. C. Rule 1.7(a)(2)), by failing to obtain the client's informed consent before preparing and having the client sign a will and discharge of mortgage which benefited the respondent's own personal interests.

The respondent was admitted to the bar on January 13, 1977. The respondent has no history of discipline. Although the respondent personally benefited from the 2010 will that the respondent drafted for the client, the provisions of that will were consistent with the provisions of the client's earlier 2003 will and reflected the client's desire to leave to the respondent's ex-spouse the client's entire legal interest in the client's former home. Accordingly, the client was not harmed by the conflict.

The respondent received an admonition.

## **ADMONITION NO. 16-19**

### **CLASSIFICATION:**

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

### **SUMMARY:**

The respondent was named the executor of the estate of a client who died on September 21, 2009.

On March 10, 2010, the respondent filed a petition for probate. On May 25, 2010, the respondent filed an inventory that listed a single-family home valued at \$150,000 and bank accounts totaling \$15,253.54. On June 9, 2010, the respondent opened up an estate account, into which he deposited his client's cash. On June 12, 2012, the respondent sold his client's house for \$125,000 and deposited the proceeds into the estate account. From that account, the respondent made disbursements to pay funeral expenses, taxes and other customary costs and expenses of the estate. He did not disburse any funds to the beneficiaries.

The respondent took no further steps of any substance to close the estate for almost three years, until bar counsel contacted him following receipt of a complaint from one of the beneficiaries. By failing to locate the beneficiaries, pay the beneficiaries and close the estate in a timely manner, the respondent violated Mass. R. Prof. C. 1.3.

By May of 2016, the respondent had located each of the beneficiaries and made distributions to them in accordance with the terms of his client's will. On May 20, 2016, the respondent filed a First and Final Account. All of the estate's funds have been accounted for and have been disbursed. The estate is now closed.

The respondent was admitted to the bar on December 22, 1982 and has no history of prior discipline.

The respondent received an admonition for his misconduct.

## ADMONITION NO. 16-20

### CLASSIFICATION:

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

### SUMMARY:

The respondent represented a young man in a civil rights action brought against a local police department in federal court. The complaint named various defendants, including a police officer. Throughout the case, the police officer was represented by counsel.

During the pendency of the federal court case, the respondent filed an unrelated lawsuit in state court. The suit named various defendants from the same police department, including the above police officer. In this case, however, the police officer was not represented by counsel.

The respondent's violation of Rule 4.2 arose as a result of his communications with the police officer in connection with the state case. Specifically, the respondent served a subpoena on the officer seeking the production of records. In response, the officer called the respondent to arrange for a time to meet in person. The respondent accepted the call and reminded the officer that he was plaintiff's counsel in the federal court action; however, he did not advise the officer to consult with his attorneys in the federal case about the propriety of speaking with him. Nor did he take any steps to alert the attorneys to his contact with the officer and/or obtain their consent to any future communications.

The respondent and the police officer subsequently met in person for the production of the subpoenaed records. Afterwards, the respondent removed the officer as a named defendant in the state case. Over the next few months, the respondent and the police officer continued to have conversations about the state case. The federal case was not specifically discussed; however, their conversations touched upon some general topics that overlapped with the federal case such as the policies and practices of the police department, as well as the officer's personal and professional background. At no point did the respondent inform the attorneys in the federal case that he was having these ongoing communications with their client.

Mass. R. Prof. C. 4.2 prohibits a lawyer from communicating about the subject of a representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order. In this case, the respondent

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communicated directly with the officer about the state case even though some of the general topics of those communications would potentially overlap with the federal case. The respondent did not obtain the consent of the officer's attorneys before having these communications and was not otherwise authorized to have them.

The respondent received an admonition for the above misconduct.

## **ADMONITION NO. 16-21**

### **CLASSIFICATIONS:**

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

Failure to Maintain Disputed Funds in Trust Account [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 a client in matter for which the respondent requested a retainer of \$2500 against which, according to the parties' written fee agreement, the respondent would bill at an hourly rate. The respondent began working on the matter before he received the retainer.

When he received the retainer, the respondent believed he had earned the bulk of the retainer and would quickly earn the rest. In fact, the respondent had only earned approximately half of the funds when he received them. The respondent deposited the client's retainer funds into his personal account. The respondent did not, at that point, provide the client with an itemized bill for the services rendered.

The relationship between the client and the respondent became strained. The respondent stopped responding to the client's calls. Eventually, the client called the respondent and left him a voicemail in which she terminated his services, demanded an itemized bill and the return of her unearned funds. The respondent promptly produced his invoice. The respondent's invoice showed a credit balance, but he did not refund the unearned funds with the invoice. The client mistook the invoice as a demand for payment and complained to bar counsel. The respondent promptly paid the credit balance after the complaint was filed.

By failing to deposit the retainer check into his IOLTA account, the respondent violated Mass. R. Prof. C. 1.15(b)(2)(ii). By failing on or before the date he paid himself to send the client in writing an itemized bill, the respondent violated Mass. R. Prof. C. 1.15(d)(2). By failing to respond to the client's requests for information, the respondent violated Mass. R. Prof. C. 1.4(a) as in effect prior to July 1, 2015 (now Mass. R. Prof. C. 1.4(a)(4)).

The respondent was admitted to the bar of the Commonwealth on December 17, 1991. He has no history of discipline. He received an admonition for the above misconduct.

## ADMONITION NO. 20-22

### CLASSIFICATIONS:

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

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

### SUMMARY:

In 2014, the respondent was engaged to represent a 96-year-old client in revising the client's estate plan. The client was unmarried and childless and lived alone with the assistance of a trusted caregiver who functioned as driver and helper. The client had about \$5 million in assets. Her existing estate plan, drafted by prior counsel, featured a pour-over will and revocable and irrevocable *inter vivos* trusts holding nearly all the assets. Of the assets in trust, most were in the revocable trust of which the client was the sole trustee during her lifetime. The trusts provided for specific bequests to various relatives, two of whom were in nursing homes, with the residue left to a grandniece and grandnephew to be distributed in installments over time.

The respondent concentrated his practice in criminal defense. He lacked relevant experience and expertise and did not associate himself with competent counsel for purposes of the representation.

Over the next few months, the respondent met with the client and ascertained her wishes. Among other things, the client said that she wanted to dissolve the revocable trust in order to take and retain control over her assets. The client also wanted to name the caregiver as her executor and trustee of the remaining trust. In light of the client's advanced age and circumstances, the respondent consulted a social worker who had worked with the client and assured himself that she was of sound mind and free from undue influence. He failed, however, to appreciate fully that, as trustee of the revocable trust, the client already had control of her assets to the extent possible and that dissolving the trust could have negative implications for the estate plan. As a result, the respondent failed to counsel the client adequately about the status of the assets and the effects of the contemplated changes. Further, he failed to appreciate the need to assess the caregiver's suitability and fitness as fiduciary and advise the client accordingly.

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The respondent prepared documents for the revised plan including a will and a directive by which to dissolve the revocable trust. The client reviewed and signed the documents in the spring of 2014. There were significant defects in those documents that the respondent did not recognize and did not explain to the client. For example, the new will provided for specific bequests to the relatives in nursing homes, which were to be held in trust and distributed on a discretionary basis. The respondent failed to incorporate trust provisions designed to preserve the relatives' eligibility for Medicaid or other public benefits. Provisions to establish testamentary trusts for the residuary beneficiaries were also inadequate. The directive to dissolve the revocable *inter vivos* trust was ineffective as written.

By failing to provide competent representation, the respondent violated Mass. R. Prof. C. 1.1. By failing to explain matters to the extent reasonably necessary to permit the client's informed decisions about the estate plan, the respondent violated Mass. R. Prof. C. 1.4(b).

A few months after the documents were executed, the client changed her mind about the revisions and returned to one of her former lawyers, who uncovered the problems with the respondent's work. The revocable trust remained in force, and the client executed new documents that negated and corrected the defects in instruments prepared by the respondent. There was thus no harm to the client.

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