ADMONITION NO. 06-09

Order (admonition) entered by the Board January 9, 2006.

HEARING REPORT

On January 21, 2005, Bar Counsel filed a petition for discipline against the Respondent, Richard Roe ("Roe"), pursuant to the provisions of Chapter 4 of the Rules of the Supreme Judicial Court, Rule 4:01, §8(3) and §§3.13(2) and 3.14 of the Rules of the Board of Bar Overseers. The Respondent, Roe, represented by counsel, filed an answer on February 8, 2005 and an amended answer on February 15, 2005.

On May 10, 2005, the matter came before Special Hearing Officer, Francis J. Russell. The Special Hearing Officer heard testimony from the Respondent, Roe, and another witness called by Bar Counsel, Attorney Jane Jones. On June 27, 2005, the parties filed their proposed findings, conclusions of law and recommendations.

I. Findings of Fact

1. Roe is an attorney admitted to the bar of the Commonwealth of Massachusetts on June 13, 2000. (Ans. 2)

2. Roe is an American citizen of Japanese descent who was raised in Japan and moved to the United States when he was fifteen years old. (Trans. pp. 61-62, 129-130 [Roe])

3. I credit Roe's testimony that Japanese is his primary language and English is his second language. (Trans. p. 131; see Trans. pp. 61-62 [Roe])

4. Roe has a Bachelor's Degree in American Studies from Brandeis University, a Master's Degree from the University of Hawaii in the same subject, and obtained a Juris Doctorate Degree from New England School of Law. (Trans. pp. 62-64 [Roe])

5. After his admission to the bar in June 2000, Roe worked six months for an attorney doing pretrial discovery work (Trans. pp. 65-66 [Roe]) and, thereafter, opened his own practice from his apartment with no employees or support staff. (Trans. pp. 133-134 [Roe])

6. Roe represented a defendant in litigation filed in Suffolk Superior Court in May 2002. (Ans. 5, 6)

7. The plaintiff was represented by Mark Smith, Esq. ("Smith") and Jane Jones, Esq. ("Jones"). (Ans. 7) Smith was then a partner in a New York law firm (Ans. 3; Ex. 1), and Jones maintained an office in Boston, Massachusetts. (Ans. 4) Jones served as local counsel and Smith was lead counsel with the responsibility for responding to motions filed by the defendants. (Trans. pp. 17-18 [Jones])

8. This matter was Roe's first case in Superior Court. (Trans. pp. 134-135 [Roe]) I credit Roe's testimony that he did not familiarize himself with the Massachusetts Rules of Civil Procedure and the Rules of the Superior Court. (Trans. pp. 67-68, 94-96, 161-162 [Roe]; Ans. 10)

9. All disciplinary actions sought by Bar Counsel in this matter result from Roe's failure to properly adhere to Superior Court Rule 9A ("Rule 9A").

10. In 2002, Superior Court Rule 9A(b)(2) required that prior to filing a motion with the court, the moving party was to serve a copy of its motion, memorandum, and supporting documentation on every other party. (Ex. 3) Rule 9A(a)(2) provided that an opposing party had ten days after service of the motion and supporting documentation to file an opposition with the moving party. (Ex. 3) Upon receipt of the opposition, the moving party had an additional ten days to file all of the parties' papers with the court along with a "separate document listing the title of each paper in the combined documents." (Ex. 3) The rule further provided that if the moving party did "not receive an opposition within three business days after expiration of the time permitted for service of oppositions, then the

moving party shall file with the clerk the motion and other documents initially served on the other parties with an affidavit reciting compliance with th[e] rule in timely fashion." (Ex. 3) Under either circumstance, the moving party was required to "give prompt notice of the filing of the motion to all parties by serving a notice of filing accompanied by a copy of the document listing the title of each paper filed." (Ex. 3) Finally, Rule 9A(a)(3) provided that "[p]apers not served with the motion or opposition may be filed only with leave of court[.]" (Ex. 3)

11. On May 20, 2002, Roe filed directly with the court a motion to dismiss plaintiff's complaint under Mass. R. Civ. P. 12(b)(6) (the "First Motion"). (Ans. 8) In so doing, Roe failed to comply with Rule 9A by failing to serve the motion and any supporting documents on the plaintiff's counsel and allowing ten days for plaintiff's counsel to serve an objection. (Ans. 11)

12. On May 23, 2002, the court denied the First Motion without prejudice, stating further that the motion could be "refiled pursuant to the requirements of Superior Court Rule 9A." (Ex. 5) Roe and plaintiff's counsel received notice of the denial of this motion. (Ans. 12; Ex. 17)

13. I credit Roe's testimony that, after receiving this denial, he reviewed parts of Rule 9A and, at the time, thought he understood its requirements. (Trans. pp. 68-70 [Roe]) I further credit his testimony that, while he understood from this review that he had to serve the motion and other documents on opposing counsel and give them ten days to respond, he did not understand that, if he did not receive an opposition, he had to wait an additional three business days before filing the documents and a certificate of no opposition with the court. (Trans. pp. 82-84, 104-105, 108-109, 135-136 [Roe])

14. On May 30, 2002, Roe hand delivered to Jones and mailed to Smith a second motion to dismiss the complaint identical to the first motion (the "Second Motion").1 (Trans. pp. 137-138 [Roe]; Ex. 7)

15. On June 11, 2002, Roe filed the motion, brief, and affidavit with the court. (Trans. p. 87 [Roe]; Ex. 7, Ex. 17) He also filed a certificate stating that he had not received an opposition to his motion. (Ex. 7) Based on my previous finding above, that Roe did not understand he needed to wait an additional three business days when he did not receive an opposition within ten days after service, I credit his testimony that he believed he had complied with Rule 9A at the time of this filing. (Trans. pp. 139-140 [Roe])

16. However, having received no opposition within ten days of service of the Second Motion, that is by June 9, Roe was required under Rule 9A to wait three additional business days before filing the motion with the court. (See Ans. 15) He failed to do so.

17. On June 12, 2002, the Second Motion was denied by the court without prejudice, ruling that Roe had again failed to meet the time requirements of Rule 9A. (Ex. 7) On June 18, 2002, notice of the court's denial of the Second Motion was sent to Roe, Smith, and Jones. (Ans. 19; Ex. 7, Ex. 17)

18. On June 20, 2002, Smith faxed and mailed to Roe, by overnight mail, "Plaintiff's Opposition to [Defendant's] Motion to Dismiss". (Trans. p. 89 [Roe]; Ex. 6) In light of the June 10, 2002 service date on the brief, Smith may have concluded that the opposition would be timely served by June 20, 2002. However, I do not draw this inference because Smith did not testify at the hearing, and Jones admitted to receiving the brief by June 9, 2002. In any event, I credit Roe's testimony that he, in good faith, did not believe this opposition was timely.

19. I credit Roe's testimony that on June 23, 2002, Roe served on Smith and Jones, by first class mail, a subsequent motion to dismiss (the "Third Motion"), and a brief in support of the

motion, both dated June 23, 2002, and an affidavit. (Ans. 21; Ex. 11; Trans. pp. 143-144 [Roe]) The Third Motion was identical to the two previous motions. (Ans. 21) Jones received the Third Motion on June 28, 2002. (Trans. pp. 36-37 [Jones])

20. On July 8, 2002, Roe filed with the court the Third Motion, the brief and affidavit, together with a certificate of no opposition. (Ex. 11) Roe was in error when he filed the Third Motion with the court on July 8, 2002 because he filed it at least one day before the time prescribed by Rule 9A. (Ans. 23) I find, however, that this was not deliberate, but was based on Roe's mistaken understanding of Rule 9A and his failure to properly allow for the additional three business days when no opposition is received (see findings above). (Trans. pp. 83-84, 104-105, 108-109, 135-136 [Roe]) In addition, I credit Roe's testimony that he believed in good faith that the opposition he had previously received on June 20, 2002, was an opposition to the Second Motion, which had been dismissed by the court, and did not constitute an opposition to this Third Motion, which had not yet been served when he received the opposition.2 (Trans. pp. 89-90, 120, 141-144 [Roe])

21. I credit Roe's testimony that on July 8, 2002, he mailed a copy of the certificate of no opposition to Attorney Jones. (Tr. 146 [Roe]) That same day, Roe mailed a copy of the certificate of no opposition in an envelope addressed to Smith at his New York office address without designating the firm name or identifying Smith as an attorney. (Ex. 8, Ex. 9; Trans. pp. 113-115, 117, 145-146 [Roe]) The post office could not deliver this envelope and it was returned to Roe on or about July 22, 2002, marked "Return to Sender – Attempted Not Known." (Ex. 9; Trans. pp. 115-116 [Roe]) I credit Roe's testimony that the failure to properly address the envelope to Smith was a mistake and was not a deliberate effort to deprive Smith of the certificate of no opposition. (Trans. p. 147 [Roe])

22. On July 9, 2002, Roe received from Smith a written opposition presumably to the Third Motion, in which Smith requested sanctions in the amount of $1,500 against Roe for the repetitive filings of the same motion. (Ans. 28, 29; Ex. 12)

23. I credit Roe's testimony that he did not file this opposition with the court, believing it to be sent to him after the filing deadline. (Trans. pp. 110-113, 147 [Roe]) I therefore find that even though Roe was in error in assuming that the filing deadline for Smith's opposition had passed and for not filing the same with the court, this was not an intentional effort to hide the opposition from the court but was based on a good faith, albeit mistaken, belief.

24. On July 18, 2002, Smith sent a fax to Roe demanding that he send him the notice of filing that was required by Rule 9A, as well as the document listing all the documents that had been filed with the court. (Ans. 31; Ex. 10) I credit Roe's testimony that, when he received this fax, he did not know what Smith was asking for. (Trans. p. 148 [Roe]) As a result, Roe reviewed Rule 9A again and, having found the reference to the two requested documents, produced a notice of filing and a document listing the title of each paper filed. (Trans. pp. 148-149 [Roe]) I credit his testimony that he served these two documents on all of the attorneys in the case, but did not file them with the court because he did not believe it was required. (Trans. p. 149 [Roe]; Ex. 20)

25. On July 22, 2002, the Superior Court allowed the Third Motion based on the lack of opposition. (Ans. 32; Ex. 11) On July 23, 2002, notice of the allowance of the Third Motion was sent to all parties. (Ans. 32; Ex. 17)

26. On July 23, 2002, having received the returned envelope addressed to Smith with the certificate of no opposition, Roe re-sent the original cover letter and certificate to Smith, without adding any explanation that the envelope had been previously sent and returned. (Trans. pp. 115-117, 150, 163-164, 174 [Roe]; Ex. 8) This time the envelope address included the law firm name and identified Smith as an attorney. (Ex. 8)

27. On August 1, 2002, Smith filed with the court an emergency motion to vacate the

dismissal of the plaintiff's complaint in which he also requested sanctions for Roe's failure to comply with Rule 9A. (Ans. 34; Ex. 13) Smith also filed an affidavit in support of his motion. (Ex. 18)

28. On August 6, 2002, Roe filed an opposition to Smith's motion, requesting that the dismissal be affirmed and that the court award him reasonable fees for Smith's frivolous claims. (Ans. 35; Trans. pp. 124-125 [Roe]; Ex. 14)

29. On August 8, 2002, the Superior Court allowed the plaintiff's motion to vacate the dismissal based on Roe's failure to comply with Superior Court Rule 9A (Ans. 36), and scheduled a hearing on August 15, 2002, on Roe's renewed motion to dismiss and on Smith's request for sanctions. (Ex. 15, Ex. 17) The hearing was held on August 15, and Roe and Jones were present. (Tr. 44 [Jones])

30. On August 23, 2002, the Superior Court denied Roe's motion to dismiss and for sanctions, and assessed sanctions against Roe personally in the amount of $1,000. (Ans. 37; Trans. pp. 41-42 [Jones], p. 125 [Roe])

31. Roe petitioned the Appeals Court for relief and, on August 30, 2002, the single justice denied it. (Trans. p. 128 [Roe]; Ex. 16)

32. With the agreement of Smith, Roe paid the plaintiff $400.00 in full satisfaction of the order of sanctions. (Ans. 39; Trans. p. 128 [Roe])

II. Conclusions of Law

33. Bar Counsel charges that the Respondent's failure to familiarize himself with the Superior Court Rules and to comply with the requirements of Rule 9A prior to filing the First Motion violated Mass. R. Prof. C. 1.1 (lawyer shall provide competent representation), 1.3 (lawyer shall act with reasonable diligence and promptness), and 8.4(d) (conduct prejudicial to the administration of justice), and (h) (conduct adversely reflecting on fitness to practice). In light of Roe's admitted failure to familiarize himself with the Superior Court Rules and to comply with the requirements of Superior Court Rule 9A prior to his filing of the First Motion, I conclude that Roe violated Mass. R. Prof. C. 1.1, and 8.4(d) and (h) as charged. In my view, however, Roe did not violate Mass. R. Prof. C. 1.3 because his misconduct did not stem from a failure to act promptly.

34. Bar Counsel charges that the Respondent's knowing failure to comply with the requirements of Rule 9A when he prematurely filed with the court both the Second

Motion and the Third Motion violated Mass. R. Prof. C. 3.4(c) (lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists), and 8.4(d) (conduct prejudicial to the administration of justice) and (h) (conduct adversely reflecting on fitness to practice). Because I have found that Roe did not knowingly fail to comply with Rule 9A, but that he simply misunderstood its requirements, I do not find that Roe's conduct constituted a violation of Mass. R. Prof. C. 3.4(c).

35. In addition, I conclude that, under the circumstances presented here, Roe's conduct does not constitute a violation of Mass. R. Prof. C. 8.4(d) or (h). These are "catch-all" rules that are subject to the dangers of vagueness and over breadth in their application to professional conduct. In Matter of the Discipline of Two Attorneys, 421 Mass. 619, 628 (1996) ("Two Attorneys"), the Court, finding violations of other disciplinary rules, rejected the Board's conclusion that the attorneys had engaged in conduct prejudicial to the administration of justice in violation of Canon One, DR 1-102(A)(5). 3 The Court reasoned:

The New Jersey Supreme Court has said that 'on those few occasions when the rule has served as the sole basis for discipline, it has been applied only in situations involving

conduct flagrantly violative of accepted professional norms.' Matter of Hinds, 90 N.J. 604, 632 (1982). Without such limiting interpretations of DR 1-102(A)(5), the rule presents the risk of vagueness and arbitrary application. See C. Wolfram, Modern Legal Ethics §3.3.1 at 87-88 (1986); 2 G. Hazard & W. Hodes, The Law of Lawyering, §8.4:501, at 957 (2d ed. Supp. 1994), discussing Rule 8.4(d) of the ABA Model Rules of Professional Conduct, which preserves the same language.

Id. at 628-629 (1996). See also Matter of Thurston, Board Memorandum, p. 13 (May 12, 1997). The Court concluded that such limitation on the application of this disciplinary rule was necessary, since in its absence "the rule presents the risk of vagueness and arbitrary application." Two Attorneys at 628-629.

36. Similarly, with respect to Canon One, DR 1-102(A)(6), the Board concluded that the standard should be that the conduct is unethical where "a reasonable lawyer would or should have known that [the lawyer's] conduct would bring disrepute upon [himself] and the bar in general." PR-94-2, 10 Mass. Att'y Disc. R. 309, 316 (1994) In that case, Attorney A, who had represented a wife in divorce proceedings, hired Attorney B, the husband's counsel in the divorce matter, to collect his fee from the wife. The Hearing Committee and the Board had no problem finding Attorney A's conduct "both outrageous and unethical." Id. at 316.

37. In my view, Roe's failure to understand the requirements of Rule 9A regarding the timing of filing papers when an opposition has not been received, as opposed to when one has been received, although showing a lack of competence, does not amount to the type of conduct egregious enough to constitute a violation of Mass. R. Prof. C. 8.4(d) or (h). In any event, even if the conduct were considered a violation of these rules, my recommendation as to sanction would not be altered.

38. Bar Counsel charges that the Respondent's false representations in the second certificate that the plaintiff had not filed an opposition to the motion to dismiss violated Mass. R. Prof. C. 3.3(a)(1) (lawyer shall not knowingly make a false statement of material fact or law to a tribunal), and 8.4(c) (dishonesty, fraud, deceit or misrepresentation), (d) (conduct prejudicial to the administration of justice) and (h) (conduct adversely reflecting on fitness to practice). When Roe received the plaintiff's opposition on June 20, 2002, he had not yet served the Third Motion, and he believed that the time for opposition to the Second Motion had passed, which testimony I credited. At the time Roe filed the Third Motion with the court on July 8, 2002, along with what Bar Counsel characterizes as the second certificate of no opposition, Roe had not received an opposition from the plaintiff relating to the Third Motion, and Roe believed that the time for opposition to the Third Motion had passed. Although Roe was in error, and in fact a timely opposition was received by Roe on July 9, 2002, I have found that Roe's actions were not deliberate but due to his mistaken understanding of the provisions of Rule 9A. As a result, I do not find that Roe made any knowingly false misrepresentations to the court in his certificate of no opposition. Because I have found that Roe did not knowingly fail to comply with Rule 9A but that he simply misunderstood its requirements, I do not find that Roe's conduct constituted a violation of Mass. R. Prof. C. 3.3(a) or 8.4(c). In addition, for the reasons set forth above, I conclude that his conduct did not violate Mass. R. Prof. C. 8.4(d) and (h).

39. Bar Counsel charges that the Respondent's failure to inform the court in connection with the Third Motion that the plaintiff had filed an opposition that Roe deemed not responsive to the Third Motion violated Mass. R. Prof. C. 3.3(d) (in ex parte proceeding, lawyer shall inform tribunal of all material facts known to lawyer which will enable tribunal to make an informed decision, whether or not facts are adverse), 3.4(c) (lawyer shall not knowingly disobey an obligation under the rules of tribunal except for an open refusal based on an assertion that no valid obligation exists) and 8.4(d) (conduct prejudicial to the administration of justice) and (h) (conduct adversely reflecting on fitness to practice). As set forth above, although Roe received an opposition to the Third Motion on July 9, 2002, he, in

good faith, believed the time for opposition had passed and had already filed the documents with the court on July 8, 2002. Because I have found that Roe did not knowingly fail to comply with Rule 9A but that he simply misunderstood its requirements, I do not find that his conduct constituted a violation of Mass. R. Prof. C. 3.3(d) or 3.4(c). In addition, for the reasons set forth above, I conclude that his conduct did not violate Mass. R. Prof. C. 8.4(d) and (h).

40. Bar Counsel charges that the Respondent's conduct in using an incomplete address to serve Smith with a copy of the Third Motion and the supporting certificate and brief, his failure to serve Jones with the pleadings, and his failure to file Smith's opposition to the Third Motion violated Mass. R. Prof. C. 3.4(c) (lawyer shall not knowingly disobey an obligation under the rules of tribunal except for an open refusal based on an assertion that no valid obligation exists), and 8.4(c) (dishonesty, fraud, deceit or misrepresentation), (d) (conduct prejudicial to the administration of justice) and (h) (conduct adversely reflecting on fitness to practice). Roe's failure to file Smith's opposition to the Third Motion was addressed above. I previously credited Roe's testimony as to service of the Third Motion on Jones, and Jones admitted to receipt of the Third Motion. I also credited Roe's testimony that his failure to properly address the envelope to Smith was a mistake and not a deliberate effort to deprive Smith of the certificate of no opposition. In light of these findings, I do not find that Roe's conduct constituted a violation of Mass. R. Prof. C. 3.3(a) or 8.4(c). In addition, for the reasons set forth above, I conclude that his conduct did not violate Mass. R. Prof. C. 8.4(d) and (h).

III. Factors in Mitigation and Aggravation

41. In mitigation, at the time of the misconduct, Roe was inexperienced in the practice of law. Matter of Franchitto, 12 Mass. Att'y Disc. R. 180, 180-181 (1996); Matter of Pascucci, 12 Mass. Att'y Disc. R. 452, 454-455 (1996); Matter of Pike, 408 Mass. 740 (1990);

Matter of Grossman, 3 Mass. Att'y Disc. R. 89, 93 (1983); ABA Standards for Imposing Lawyer Sanctions §9.32(f).

42. There is nothing in the record that indicates that the plaintiff was ultimately harmed by Roe's actions.

43. Roe was sanctioned by the court as the result of his failure to properly comply with the Rule, and paid the sanction in accordance with an agreement with the plaintiff.

IV. Recommendation for Discipline

Roe recommends that he receive no sanction. Bar Counsel seeks an eighteen-month suspension based on his charges of repeated, knowing misrepresentations to the court to improperly obtain dismissal of the case against his client, intentional disregard for the rules of the court, and dishonesty in dealing with opposing counsel. I have rejected most of these charges.

In essence, Roe was negligent in not familiarizing himself with the requirements of Rule 9A and, as a result, on three separate occasions filed documents with the court and with opposing counsel that did not comply with the requirements of Rule 9A. Although I consider Roe's misconduct to be more inadvertent than the almost willful blindness found in AD-98-85, 14 Mass. Att'y Disc. R. 971 (1998) (attorney's conduct in preparing, signing under the pains and penalties of perjury, and filing with a court an affidavit under Rule 9A without apparent concern for accuracy constituted inadequate preparation, and resulted in an admonition), Roe compounded his carelessness by repeating his mistake at least twice, despite the court advising him of his non-compliance with Rule 9A, and by failing to seek additional information or advice in order to better understand the requirements of Rule 9A.

The case most analogous to this matter is AD-98-85, 14 Mass. Att'y Disc. R. 971 (1998), which

involved an attorney who mailed a notice to the opposing party pursuant to Rule 9A, advising the opposing party that any opposition to the attached motion was due within ten days, with a certificate of service dated April 28, 1998. The opposing party received the documents in an envelope postmarked April 30, 1998, and advised the attorney of the discrepancy in the dates of service in a letter accompanying his opposition. The attorney then filed the documents with the court, accompanied by an affidavit in which she attested to the date of service upon the opposing party as April 28, 1998. The attorney's conduct in preparing, signing under the pains and penalties of perjury, and filing with a court an affidavit under Rule 9A without apparent concern for accuracy constituted inadequate preparation in violation of Mass. R. Prof. C. 1.1, and resulted in an admonition.

In AD-03-56, 19 Mass. Att'y Disc. R. 630 (2003), another case involving failure to comply with Rule 9A, an attorney filed suit against a contractor and subcontractor on behalf of his client. When served by the subcontractor with a motion pursuant to Rule 9A, the attorney failed to notify his client and failed to file any opposition within the requisite time period, and the case against the subcontractor was dismissed as a result. Subsequently, the contractor served a motion pursuant to Rule 9A, and the attorney again did not notify his client or file any opposition. For whatever reason, the court did not act upon the contractor's motion. The attorney failed to respond to inquiries from his client, and the client learned of the dismissal of her case against the subcontractor by calling the court. The attorney's neglect and inadequate communication with his client was in violation of Mass. R. Prof. C. 1.3 and 1.4, and resulted in an admonition.

Finally, in Matter of Manzi, 12 Mass. Att'y Disc. R. 269 (1996), the attorney filed suit on behalf of his client but then failed to effect service on the defendants, and the suit was dismissed by the court. The attorney then filed a motion to remove the default, but the motion was docketed by the court as not in compliance with Rule 9A and the attorney took no further action on the motion. The attorney's failure to cause appropriate service of process, to comply with applicable motion procedure and to take effective action to correct his prior errors was found to be inadequate preparation and neglect, and failing to represent his client zealously. Because the attorney also failed to cooperate with Bar Counsel, necessitating the issuance of two subpoenas, the parties stipulated to a public reprimand.

In my view the misconduct in each of these cases is more egregious than that presented here. Therefore, I recommend that the Respondent, Richard Roe, receive an admonition.

Respectfully submitted,

By the Special Hearing Officer, Francis J. Russell

FOOTNOTES:

[1] This Second Motion was accompanied by an affidavit. (Trans. p. 138 [Roe]; see Ex. 7) There is a dispute as to whether Roe served his brief in support of the Second Motion at the same time. He testified that the date on the brief of June 10, 2002, was an error and was incorrectly repeated as the date of service on his certificate of no opposition. (Trans. pp. 85-88, 137-140 [Roe]; Ex. 7) Attorney Jones could not recall when she was served with the brief, but after reviewing her time records, stated that she received it on June 9, 2002 (one day before the date on the brief). (Trans. p. 31 [Jones]) In any event, we need not resolve this matter here because, as set forth below, although the court denied the Second Motion without prejudice as untimely under Rule 9A based upon the June 10, 2002 date of service of the brief (Ex. 7), even if Roe had served the brief on May 30, 2002, at the time he served the motion, his subsequent filing with the court on June 11, 2002, would still have been premature under Rule 9A.

[2] The fact that Smith sent Roe another opposition on July 9, 2002 (see below), supports this finding.

[3] Canon One, DR 1-102(A)(5) and (6), respectively, are the predecessor rules, containing the same language as Mass. R. Prof. C. 8.4(d) and (h), and therefore cases construing those rules are applicable.