

## **ADMONITION NO. 06-23**

### **CLASSIFICATIONS:**

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

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

### **SUMMARY:**

In late July 2002, a single mother hired and paid the respondent a retainer to represent her in ongoing disputes with the father of her children over his visitation rights. The father's visitation had been severely restricted due to his drug and alcohol problems and long criminal history, as a result of which he was in and out of jail. In early 2002, however, the father had started a contempt proceeding against the client on allegations, denied by the client, that she was withholding all visitation, and he had secured expanded, supervised visitation rights. In June 2002, after the supervised visits proved uneventful, the client, pro se, had stipulated to unsupervised visitation with a review scheduled for October 2002.

The father had no contact with the client for about two months after the respondent's engagement, but he resurfaced shortly before the review date and asked to visit the children. The client, concerned for the children's safety in light of the father's past behavior, avoided the visit. By then, the respondent realized that she could not appear for the review due to a conflicting obligation, but she failed to seek a continuance. Instead, the respondent told the client to go to court and, if the father appeared, ask to have the matter postponed due to unavailability of counsel. The client and the father both appeared on the review date. The client was unable to get a continuance and had to proceed on her own. After hearing from the father, the judge found the client in contempt and gave her a fifteen-day suspended sentence.

The respondent withdrew from representation and subsequently refunded the entire retainer. In 2003, the client returned to court and got the supervision requirement restored on her own after the father again went to jail, and all visitation rights were terminated by the court thereafter.

The respondent's failure to appear for the client at the review hearing or obtain a continuance prior to the hearing date violated Mass. R. Prof. C. 1.2(a) (failure to seek client's lawful objections through reasonably available means) and 1.3 (failure to act with reasonable diligence)

The respondent has no history of discipline. She received an admonition for her misconduct.