

ADMONITION NO. 06-24

CLASSIFICATIONS:

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

Improper Disclosure of Confidences of Lawyer's or Firms Former Client [Mass. R. Prof. C. 1.9(c)(1)]

SUMMARY:

In the fall of 2005, a prospective client applied to a county bar association for legal representation for a bankruptcy. The prospective client's written application for a referral was forwarded by the bar association to the respondent, who was on the association's reduced fee panel.

The respondent was then estranged from her husband. By coincidence, the prospective client was in a relationship with the respondent's husband but had not told him about the proposed bankruptcy. On receipt of the referral application, the respondent realized that the prospective client was the woman living with her husband at his residence, a marital asset. As a result, she informed the bar association that she had to decline the representation due to a conflict of interest and left a telephone message to that effect for the prospective client.

The respondent also noticed, however, that the referral application listed rent payments by the prospective client to the respondent's husband. The respondent's husband had previously told her that the prospective client paid no rent. The respondent, recognizing that any rent payments could affect an eventual divorce or separation agreement, called her husband and confronted him about the rent payments. She also told her husband that she had learned of the payments from the prospective client's application for a bankruptcy referral. The husband in turn told the prospective client of the call and his discovery of her bankruptcy plans.

The respondent's disclosure of confidential information acquired from a prospective client, without the prospective client's consent after consultation, violated Mass. R. Prof. C. 1.6(a). The requirements of Rule 1.6 apply to confidential information imparted by a prospective client for purposes of determining whether the lawyer will accept a case even if the lawyer is never retained. See Mass. R. Prof. C. Scope [3]. In addition, by using the information for her own purposes, the respondent violated Mass. R. Prof. C. 1.9(c)(1) (prohibiting a lawyer from using confidential information relating to a representation to the disadvantage of a former client or to the lawyer's advantage). The respondent was inexperienced at the time of the referral and failed to recognize that the information in the referral application was confidential. No ultimate harm resulted from the disclosure. The respondent, who had no history of discipline, received an admonition conditioned on her attendance at a CLE course designated by bar counsel.