

## **ADMONITION NO. 06-21**

### **CLASSIFICATIONS:**

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

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

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

### **SUMMARY:**

In February 2004, an incarcerated client serving a federal sentence sought the services of the respondent following his conviction and sentencing in United States District Court. The respondent and the client met at a correctional facility, and the client engaged the respondent to handle his appeal in the United States Court of Appeals for the First Circuit. The client and the respondent signed a fee agreement, and the respondent later that day met with the client's fiancée who gave the respondent a check for \$5,000 which represented payment in full of the flat fee agreed upon by the client and the respondent for the appeal. In February 2004, the appeal was pending, but the court had not yet established a briefing schedule. The court-appointed attorney who had represented the client at trial was the attorney of record in the appeal.

As instructed by the respondent, the client's fiancée copied all of the case-related documents in her possession and provided those copies to the respondent. When the transcripts of all the proceedings in the district court became available, the attorney of record sent copies to the client's fiancée, and she in turn made copies for the respondent. The respondent reviewed the documents and transcripts that he received from the client's fiancée, he researched the issues, and he monitored the status of the case through Pacer.

The respondent never contacted the attorney of record, filed an appearance, or filed a brief. The respondent at first accepted or returned the client's and the fiancée's telephone

calls, but then became non responsive to their inquiries. Unaware that the client had retained the respondent, the attorney of record filed a brief for the client in March 2005. The attorney of record argued the appeal, and the court affirmed the conviction.

In September 2005, upon learning of the court's decision and discovering that the respondent had not filed an appearance or a brief, the client's fiancée filed a grievance with bar counsel. The respondent immediately refunded the \$5,000 retainer and acknowledged that he should have withdrawn from the representation and refunded the retainer as soon as he realized that he would be unable to perform the work he had undertaken.

In mitigation, the respondent's health problems and the serious health problems of his child, along with the death of a family member, contributed to the respondent's neglect of the client's case. In addition, the respondent had just become a sole practitioner and was overwhelmed by work. He has since joined a firm. Finally, the attorney of record who handled the appeal fully protected the client's appellate rights, and the respondent refunded the fee to the client.

By failing to file an appearance and a brief on behalf of the client, the respondent neglected a legal matter entrusted to him, in violation of Mass. R. Prof. C. 1.3. By failing to respond to the attempts by the client and his fiancée to contact him, the respondent also failed to adequately communicate with his client, in violation of Mass. R. Prof. C. 1.4(a). The respondent's failure to withdraw from the representation and immediately refund the unearned fee when he became unable to perform the work he had undertaken was in violation of Mass. R. Prof. C. 1.16(d).

The respondent received an admonition for his misconduct in this matter, conditioned upon attendance at a continuing legal education course designated by bar counsel.