

ADMONITION NO. 06-25

CLASSIFICATIONS:

Failure to Notify of Receipt or to Disburse Promptly [Mass. R. Prof. C. 1.15(c)]

Failure to Account on Request or on Final Disbursement [Mass. R. Prof. C. 1.15(d)(1)]

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

SUMMARY:

The respondent and opposing counsel represented elderly clients who applied for criminal assault complaints against each other after an altercation in May 2004. In August 2004, the parties agreed at a magistrate's hearing to an accord and satisfaction whereby the opposing party was to pay \$277 to the respondent's client as compensation for her medical bills.

Opposing counsel subsequently sent the respondent a check in that amount and a release. In his cover letter, opposing counsel instructed the respondent to hold the check in escrow pending execution and return of the release. The respondent, erroneously believing that the accord and satisfaction was not intended to release any civil claims, refused to have his client sign the release. In addition, the respondent turned the funds he had received from opposing counsel over to his client without prior notice to or authority from opposing counsel.

The respondent's failure to acknowledge the effect of the agreement reached at the magistrate's hearing derived from his misunderstanding of the accord and satisfaction procedure and his misinterpretation of the purpose of the ensuing payment. Even if the scope of the agreement was unclear, however, the respondent should have known that he had no right to disburse the funds unilaterally in violation of the escrow terms imposed by

opposing counsel.

The respondent's release of funds entrusted to him in escrow absent mutual agreement or notice to opposing counsel violated Mass. R. Prof. C. 1.15(c) and (d)(1), and his breach of his fiduciary obligation as escrow agent reflected adversely on his fitness to practice law, in violation of Mass. R. Prof. C. 8.4(h).

The respondent was relatively inexperienced at the time of these events and has no history of discipline. He received an admonition for his misconduct conditioned on his attendance at a CLE course acceptable to bar counsel.