

ADMONITION NO. 06-20

CLASSIFICATIONS:

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

Failure to Safeguard Trust Property Other Than Funds [Mass. R. Prof. C. 1.15(b)(3)]

Failure to Return Papers on Discharge [Mass. R. Prof. C. 1.16(e)]

SUMMARY:

The respondent has been a member of the bar since 1972 and has no disciplinary history. He received an admonition for misconduct in two unrelated criminal defense matters.

In the first matter, the respondent agreed to represent a defendant on an appeal of a rape conviction after a trial in October of 2000. The client was incarcerated, and the respondent was retained by a girlfriend of the client. The respondent filed the appeal brief in July of 2001, and the Appeals Court affirmed the conviction in January of 2003.

To prepare the appeal, the respondent and an associate reviewed the trial transcript and exhibits and the trial court's file. The respondent also obtained and reviewed trial counsel's file and discussed the matter with trial counsel. The respondent did not, however, review potential appellate issues with the client and did not provide the client with a draft of the brief for review and comment. The respondent's inadequate communication with his

incarcerated client was in violation of Mass. R. Prof. C. 1.4(a) and (b).

In the second matter, the respondent represented a defendant on two charges of armed assault with intent to murder. The client was convicted on both charges after a four-day jury trial at the end of October, 2003, and received a lengthy sentence in January of 2004.

A dispute arose between the respondent and the client over payment of the balance of the respondent's fee. The respondent withdrew from representing the client, and the court appointed new counsel to handle the client's appeal. At some point, the client requested that the respondent provide him with his file. By letter dated June 25, 2004, the respondent purported to send to the client copies of some file material; in fact, the letter received by the client had no enclosures due to error.

The client filed a grievance with the Office of Bar Counsel, a copy of which was sent to the respondent for response on August 30, 2004. The respondent acknowledged to bar counsel that enclosures had been omitted from his prior letter through oversight and in October 2004, provided copies of a large number of file documents. The client then provided a list of specific documents that had been given to the respondent by the prosecutor but that the respondent had not yet produced. The respondent then in December produced additional documents that had been misplaced, but he could not locate some of the documents received from the prosecutor.

The respondent's conduct in misplacing and losing material from the client's file was in violation of Mass. R. Prof. C. 1.15(a) (as in effect prior to July 1, 2004) and, to the extent that the material was lost on or after July 1, 2004, 1.15(b)(3). His conduct in failing to provide the client with file material within a reasonable time of request was in violation of Mass. R. Prof. C. 1.16(e).