

ADMONITION NO. 06-16

CLASSIFICATION:

Alluding to Matters Not Supported by Admissible Evidence [Mass. R. Prof. C. 3.4(e)]

SUMMARY:

In or around October 5, 2003, the respondent was retained to represent a client on criminal charges pending in district court. On October 20, 2003, the client was arrested on additional criminal charges and he was arraigned in the same district court on those charges on October 22, 2003. A pre-trial conference for both matters was scheduled for December 1, 2003.

At his December 1, 2003 pre-hearing on the two pending matters, the client pled guilty and received a sentence of one year in the house of correction with four months to serve and the balance suspended to November 30, 2005.

In November 2004, while on probation on the district court matters, the client was arrested on new criminal charges. The client was then charged with violating his probation as a result of the new arrest.

On November 15, 2004, the client filed a motion to vacate his December 1, 2003 guilty plea and a motion for new trial on the December 2003 convictions. As grounds for the motion, the client alleged ineffective assistance of counsel on the part of the respondent. One of the client's allegations was that the respondent had failed to inform the court that the client was taking new medication at the time of his guilty plea, which affected his ability to concentrate and his understanding of the proceedings.

The prosecutor advised the respondent that she planned to file an opposition to the client's motion and asked the respondent to provide an affidavit. The respondent prepared and filed the requested affidavit. The motion was heard by the court on September 8, 2005, and denied.

The affidavit filed by the respondent outlined her communications with the client and his family concerning his plea. Although the affidavit revealed client confidences, the respondent was permitted to do so by Mass. R. Prof. C 1.6(b)(2) in light of the claims against her of ineffective assistance. However, the respondent went a step further than necessary and concluded her affidavit by stating, "In my personal and professional opinion, (the client) made a knowing, informed and intelligent waiver of his rights and he should not be allowed to withdraw his guilty plea..." The respondent's statement as to the merits of the client's motion violated Mass. R. Prof. C. 3.4(e).

The respondent was admitted to the Bar in 1999 and has no prior discipline. She received an admonition for her conduct in this matter, conditioned upon her attendance at a CLE course designated by bar counsel.