

ADMONITION NO. 05-23

CLASSIFICATIONS:

Conflict Directly Adverse to Another Client [Mass. R. Prof. C. 1.7(a)]

Conflict from Responsibilities to Another Client or Lawyer's Own Interests [Mass. R. Prof. C. 1.7(b)]

SUMMARY:

The respondent represented both a driver and passenger in a motor vehicle accident claim in circumstances where it became obvious that there was a conflict of interest at least after the insurance carrier for the driver of the car determined that there was an issue as to liability.

In September 2000, two sisters who had been the driver and passenger in a car retained the respondent to represent them in connection with a collision between the driver's car and a truck. The accident caused minor injury to both sisters. The sisters claimed in their accident report and to the respondent that the driver of the truck was at fault. However, the truck driver claimed in his accident report that the driver of the car was at fault. The respondent obtained this report in the fall of 2000.

In September 2000, the respondent sent a letter of representation to the car driver's insurer on behalf of both the car driver and passenger and thereafter collected PIP payments on behalf of both clients. In October 2001, the respondent filed a claim with the truck driver's insurer on behalf of both the car driver and passenger.

The car driver's insurance company decided in August 2002 that the car driver was liable for the accident based on the truck driver's version of events. In August 2002, the insurance company for the car driver made an offer to the respondent to settle the passenger's bodily injury claim for \$4,500. In September 2002, the passenger accepted the offer. The insurance company for the truck driver denied liability and declined to settle with either the car driver or passenger.

In October 2002, after resolving the passenger's claim, the respondent wrote the car driver and advised her that both insurance companies had decided that she was liable for the accident and that he would no longer pursue this matter on her behalf. He advised her that she might wish to consult with another attorney regarding her claim and that the statute of limitations would not expire until August 2003.

At least after the respondent learned in August 2002 that the car driver was potentially partially or entirely responsible for the accident and that the passenger had a claim against

the car driver, his conduct in continuing to represent both sisters constituted a conflict of interest in violation of Mass. R. Prof. C. 1.7(a) and (b).

The respondent was admitted to practice in 1965 and has no prior history of discipline. The respondent received an admonition for his misconduct in this matter, conditioned upon his attendance at a continuing legal education course designated by bar counsel.
