

## **ADMONITION NO. 05-24**

### **CLASSIFICATIONS:**

Handling Legal Matter Without Adequate Preparation [Mass. R. Prof. C. Rule 1.1]

Failing To Act Diligently [Mass. R. Prof. C. Rule 1.3]

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

### **SUMMARY:**

In 1996, the respondent represented a defendant in a petition to establish the paternity of a child born in October 1992. The respondent's client told the respondent that he was earning \$200 per week and that he had no assets. In fact, the client had income far in excess of \$200 per week and owned assets of some value. In connection with the paternity case, the client filed a financial statement that misrepresented his income and assets. Based on an agreement between the client and the child's mother, the court issued a judgment of paternity against the respondent's client and ordered him to pay \$75 per week in child support starting from the date of the order.

In January 1997, the respondent filed a complaint for modification for his client, seeking joint physical and legal custody of the child. The mother of the child filed an answer to the complaint and a counterclaim seeking child support from the father retroactive to the child's date of birth.

In July 1997, the client informed the respondent that his girlfriend planned to finance the purchase of a house for herself but that title would be in the client's name because the client had good credit and his girlfriend did not. The respondent made no further inquiry.

The respondent attended the closing on the property with the client in August 1997. The deed to the property was issued in the client's name and, after the deed was recorded, it was returned to the respondent. The day after the closing, the client asked the respondent to prepare a deed transferring the property from the client to the client's girlfriend. The respondent prepared the deed and delivered it to the client. The respondent believed that the client intended to execute this deed immediately or shortly after the respondent gave it to him, but, in fact, the client did not execute the deed, and the property remained in the client's name.

In connection with various court appearances on the client's modification/contempt case between December 1, 1997, and January 1, 1999, the respondent filed with the court several financial statements in which the client maintained that his income was \$200 per week and that he owned no interest in any real estate. Beyond asking his client to confirm these representations, the respondent did not conduct any further inquiry to confirm that the client had transferred title to the property to his girlfriend and that the client's income was correctly stated.

In about August 1998, the mother discovered the respondent's client's interest in the real estate. On August 7, 1998, the mother filed a complaint for modification in which she alleged that there had been a material change in circumstances in the client's income since September 4, 1996, and that the client had misrepresented his income and assets at the time he agreed to pay \$75 per week in child support. The mother's complaint for modification requested an increase in child support dating back to September 4, 1996.

Relying on his client's representations, the respondent filed an answer to the complaint for modification on August 27, 1998, denying that there had been a change in his client's circumstances.

The mother subpoenaed the mortgage documents for the original purchase of the real estate; and two subsequent the home equity loan applications the respondent's client had made in December 1997 and July 1998. After receiving these documents, the mother amended her complaint in November 1998 to allege fraud by the respondent's client on his original 1996 financial statement.

Trial on the two cross complaints for modification was scheduled for February 18, 1999. In January 1999, the mother's counsel delivered to the respondent copies of the mortgage and loan documents showing the father's income and assets. Through these documents, the respondent learned for the first time that his client had not transferred his interest in the real estate to his girlfriend and that the client had claimed to be earning substantially more income on his loan applications than he had listed on his financial statements filed with the court. On January 18, 1999, the respondent submitted a new financial statement to the court on behalf of his client on which the client accurately listed his interest in the real estate.

At the trial on February 18, 1999, the court found that the client had sufficient assets and income to warrant an increase in child support from \$75 per week to \$218 per week. The court also ordered the respondent's client to pay the mother's attorney's fees and costs.

The respondent violated Mass. R. Prof. C. 1.1 (lawyer shall provide competent representation), 1.3 (lawyer shall act with reasonable diligence), and 8.4(h) (lawyer shall not engage in conduct adversely reflecting on fitness to practice law), by failing to investigate the accuracy of the information contained on his client's financial statements and by filing the financial statements with the court when further inquiry or preparation would have suggested that the information on the statements was not true.

In mitigation of this misconduct, the respondent had been admitted to practice for only a few months when he began representing the client in the paternity action. He also had virtually no experience in family law or real estate matters, which contributed to his failure to appreciate the implications of his client's purchase of a house.

The respondent received an admonition for his misconduct.

---