

ADMONITION NO. 05-25

CLASSIFICATION:

Solicitation Violations [Mass. R. Prof. C. 7.3(d)]

SUMMARY:

The respondent was consulted by an adult son about his elderly mother, who lived in a nursing home. The son informed the respondent that his sister and her husband (daughter and son-in-law) were trying to take over the mother's affairs and had filed a petition to become her guardians on grounds of mental illness. At the son's request, the respondent agreed to assist the mother in the matter and prepare whatever documents were necessary to protect her interests.

The respondent did not review the court records or otherwise inquire about the guardianship proceeding. As a result, the respondent was unaware that the mother already had a longtime attorney with whom she was content. She was also unaware that, pending the appointment of a permanent guardian, the son-in-law had been appointed as the mother's temporary guardian based on evidence that the son was placing his mother at personal and

financial risk.

In sole reliance on her limited communications with the son, the respondent prepared a fee agreement for representation of the mother and visited the mother at the nursing home. The respondent related to the mother that a hearing was scheduled on the guardianship and then asked the mother whether the mother was represented by counsel in the proceeding. The mother replied that she had an attorney and suggested that the respondent contact her son-in-law for more information. The respondent placed a call to the son-in-law. While awaiting a response, the respondent told the mother that she would leave the fee agreement in the event that the mother wanted the respondent's representation. A few minutes later, the son-in-law returned the call, informed the respondent that he had been appointed as temporary guardian, confirmed that the mother was already represented, and instructed the respondent not to communicate further with the mother. The respondent then departed after leaving the proposed fee agreement with the mother, who did not sign it.

The respondent was relatively inexperienced and failed to understand that her concern about protecting the mother's interests, however sincere, did not entitle her to make an in-person approach to the mother and offer to represent the mother in these circumstances. The respondent's encounter with the mother violated Mass. R. Prof. C. 7.3(d) (soliciting professional employment for a fee in person). The respondent, who had no history of discipline, received an admonition conditioned on her attendance at a CLE course designated by bar counsel.
