

ADMONITION NO. 05-17

CLASSIFICATION:

Improper Contingent Fee [Mass. R. Prof. C. 1.5(c)]

SUMMARY:

In October 1999, a client retained the respondent to represent him in challenging certain provisions of a family trust created in 1989. The respondent contacted a law firm in Florida to assist in the matter, because the trust instrument in question had been prepared in Florida and the principal office of the trustee was located in Florida. In January 2000, the client entered into a written fee agreement with the Florida firm to represent him in connection with litigation there. The fee agreement specified an hourly rate for the Florida firm and also indicated that the respondent would supervise the handling of the case and be available for consultation with the client.

The respondent and the client did not enter into a written fee agreement at the time the respondent undertook the representation of the client. In December 1999, the client sent the respondent a \$10,000 retainer. The client ultimately agreed that the respondent's fee would be ten percent of any settlement or judgment. However, no written contingent fee agreement in compliance with Mass. R. Prof. C. 1.5(c) was ever prepared by the respondent or executed by the respondent and the client.

As the Florida case progressed, the parties decided to enter into mediation, as a result of which the case was settled for \$900,000 in 2000. The settlement agreement signed by the client provided for the client to receive \$810,000 and the respondent to receive \$90,000. After receiving his check for \$90,000, the respondent refunded the \$10,000 retainer that he had received from the client in 1999. In January 2003, the client filed a complaint with bar counsel, alleging that the \$90,000 fee was improper.

By failing to execute a written contingent fee agreement with the client, the respondent violated Mass. R. Prof. C. 1.5(c).

The respondent was admitted to practice in 1968 and has no prior history of discipline. The respondent accordingly received an admonition for his misconduct in this matter.