

ADMONITION NO. 05-20

CLASSIFICATIONS:

Handling Legal Matter when Not Competent or without Adequate Preparation [Mass. R. Prof. C. 1.1]

Failing to Seek Client's Lawful Objectives or Abide by Client's Decision to Settle or Enter Plea [Mass. R. Prof. C. 1.2(a)]

Failing to Act Diligently [Mass. R. Prof. C. 1.3]

Trust Account Violation [Mass. R. Prof. C. 1.15(b)(1)]

SUMMARY:

On or around August 8, 2001, a decedent's brother retained the respondent to probate the decedent's estate, which included a home, life insurance proceeds, bank account funds and several uncashed payroll checks. At the time of the decedent's death, he was behind on payments toward a first and second mortgage on his home. The first mortgagee had begun foreclosure proceedings. The brother decided to allow the foreclosure to proceed because he did not believe that the home would sell for more than was owed on the mortgages.

The decedent had executed a will in 1986, leaving all of his property to his wife and naming his brother as executor. The residuary legatees were his three children and his stepson. The decedent and his wife divorced prior to his death. The respondent incorrectly believed that

the divorce invalidated the decedent's will, instead of merely the bequest to the wife. Consequently, he did not file the will. Instead, he filed a petition to name the brother as administrator of the estate and he named the decedent's three children as heirs. On August 16, 2001, the decedent's brother was appointed administrator of the estate.

The decedent's brother gave the respondent several checks made payable to the decedent and a \$10,000 life insurance policy. Periodically, he forwarded other documents to the respondent, including correspondence pertaining to the foreclosure of the decedent's home, the decedent's overdue electric and water heater rental bills, his unpaid income taxes from the year 2000, and his life insurance policies. He also periodically telephoned the respondent seeking advice about estate-related matters. The respondent failed to return the majority of his calls.

On October 21, 2003, the decedent's brother sent the respondent a letter requesting that the respondent produce a copy of the estate file. When he did not receive it, he filed a grievance with bar counsel on November 3, 2003. He discharged the respondent and retained new counsel in March 2004.

In the approximately two and one-half years that the respondent represented the estate, he did very little substantive work to conclude the administration of the estate. He prepared and filed a petition for administration of the estate, viewed the decedent's home, collected documents and had several telephone conversations regarding insurance policies, the foreclosure sale, and the decedent's outstanding debts. He also reviewed court documents, deposited the decedent's pension fund check in the amount of \$4,701.26 into his IOLTA account and paid the decedent's funeral bill and the probate court filing fee from proceeds of that check. The respondent took the remaining \$973.55 as payment toward his legal fees.

The respondent never opened an estate account. He failed to collect the decedent's two life insurance policies and failed to deposit the decedent's paychecks, allowing them to become stale. He did not contact the IRS to attempt to compromise unpaid income taxes. In addition, the respondent was unaware that the decedent had mortgage insurance and thus failed to make a claim for reimbursement against the

second mortgagee after the amount due the second mortgagee was inadvertently paid twice, once from the foreclosure proceeds and once from the mortgage insurance.

The respondent's failure to research probate law concerning the effect of a divorce on a will, causing him not to file the decedent's valid will, constituted inadequate preparation in violation of Mass. R. Prof. C. 1.1. The respondent's failure to complete the estate, failure to address the decedent's tax problems, failure to gather and collect all estate assets and to deposit the decedent's payroll, insurance and tax refund checks into a trust account was in violation of Mass. R. Prof. C. 1.2(a) and 1.3 and 1.15(a) of the rule in effect prior to July 1, 2004 (now 1.15(b)(1)).

The respondent was admitted to the bar on December 11, 1971. He received a private reprimand in 1992, for neglect of an estate matter. In mitigation, the respondent was under a great deal of stress during the relevant time period because his wife's undiagnosed serious health problems his nephew's serious injury in a motor vehicle accident and other domestic issues. As a result, it was difficult for him to manage his law practice. The respondent's family problems are now resolved.

The respondent's delay and errors caused no ultimate harm to the estate, and the respondent has now refunded all legal fees that he was paid. Accordingly, the respondent received an admonition, conditioned upon his attendance at CLE courses designated by bar counsel.