

CLASSIFICATIONS:

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

Failing to Communicate Adequately with Client [Mass. R. Prof. C. 1.4]

SUMMARY:

The respondent was appointed to represent a client on a criminal matter in July 2003 after the client became dissatisfied with prior appointed counsel. The client was convicted in May 2004 after a jury waived trial and sentenced to one year in the house of correction.

Immediately after he was sentenced, the client asked the respondent to file an appeal. The respondent explained to the client that his conviction was not in itself an issue for appeal, and advised the client he would review the file and advise him of any appellate issues.

The respondent reviewed the client's case file and determined it contained no appellate issues. The respondent subsequently advised the client's wife he could find no issues in the client's case to appeal.

After his release from the house of correction in or around July 2004, the client contacted the respondent to determine the status of his appeal. The respondent advised the client he did not file an appeal because he could find no appellate issues. The client filed a grievance with bar counsel in November 2004.

After receiving a copy of the grievance, the respondent filed a motion to file a late notice of appeal with a supporting affidavit. The court returned the motion to the respondent several days later because it did not contain any reason for allowance and because the respondent failed to enclose the required \$300 filing fee with the motion.

In December 2004, the client contacted the Committee for Public Counsel Services (CPCS) regarding the respondent's failure to file an appeal on his behalf. CPCS appointed appellate counsel for the client. In early April 2005, the Appeals Court allowed appellate counsel's motion to file late notice of appeal and the appeal was reinstated. Thus, the client suffered no ultimate harm as a result of the respondent's conduct.

By failing to adequately discuss the client's appellate rights with the client and failing to file a notice of appeal on the client's behalf, the respondent violated Mass. R. Prof. C. 1.3 and 1.4.

The respondent was admitted to the Massachusetts Bar in 1977. He has no prior discipline but was previously cautioned by bar counsel as to a similar problem. The respondent now understands that CPCS requires appointed counsel to file a notice of appeal for each client convicted after trial unless the client affirmatively declines to appeal.

The respondent received an admonition for his conduct in this matter.