

## **ADMONITION NO. 05-12**

### **CLASSIFICATION:**

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

A Lawyer May Limit the Objectives of the Representation if the Client Consents after

Consultation [Mass. R. Prof. C. 1.2(c)]

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 case. The client was convicted after trial on October 7, 2002, and sentenced to 3 1/2 years in the house of correction.

The respondent did not file a notice of appeal because he did not believe that there were meritorious appellate issues. However, the respondent failed to adequately advise the client of his appellate rights and did not discuss appellate issues with him. Between October 2002 and February 2003, the client attempted unsuccessfully to contact the respondent to inquire about his post conviction remedies. The respondent was not aware of the client's efforts.

In early February 2003, the client contacted the Committee for Public Counsel Services regarding the respondent's failure to file an appeal on his behalf. The respondent was advised by CPCS that its performance guidelines require an attorney to consult with a client regarding the decision to file an appeal.

On February 25, 2003, after speaking to CPCS, the respondent filed a motion for a new trial, a motion to withdraw and request for appellate counsel, a motion to file a late notice of appeal, and notice of appeal. The new trial motion was premature and potentially harmful to the client, because it stated no grounds for allowance and was not supported by an affidavit. Pursuant to Mass. R. Crim. P. 30, any grounds not raised in a new trial motion are waived at the discretion of the court.

On March 21, 2003, CPCS appointed appellate counsel for the client and his appeal was reinstated. Appellate counsel was allowed to withdraw the respondent's new trial motion. The Appeals Court subsequently affirmed the client's conviction on November 19, 2004. The client thus 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 behalf of the client, the respondent violated Mass. R. Prof. C. 1.2(c), 1.3 and 1.4. By filing a premature and defective motion for new trial, the respondent violated Mass. R. Prof. C. 1.1.

The respondent was admitted to the Massachusetts Bar in 1991. He now understands that he is required to have a thorough discussion of post conviction options with every convicted client and that he must file a notice of appeal if there is any question as to the client's decision. He accordingly received an admonition for his conduct in this matter, conditioned upon his attendance at a CLE course designated by bar counsel.