

## **ADMONITION NO. 05-13**

### **CLASSIFICATIONS:**

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

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

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

Failure to Return Papers on Discharge [Mass. R. Prof. C. 1.16(e)]

### **SUMMARY:**

In 1998 and 2000, the respondent undertook to represent a client in two unrelated matters. Although the respondent agreed orally to charge the client a one third contingent fee in each case, he did not cause a written contingent fee agreement to be executed on either matter.

The first case was a personal injury matter arising out of a motor vehicle accident that the client had in June of 1998. The respondent took the claim to arbitration in March of 2004, but the arbitrator decided against the client.

The second case was a products liability case for injuries that the client's minor child sustained when using a scooter in August of 2000. Other than writing two letters to the insurer in March of 2001 and one letter in January of 2002, the respondent took no action to pursue the products liability claim, despite many requests from the client that he do so.

By letter dated August 18, 2004, the client discharged the respondent and requested the return of both files as well as the scooter itself. The respondent did not reply. The respondent did not finally return the files or the scooter until December 7, 2004, after the client filed a complaint with bar counsel in November 2004 and bar counsel requested a response. The statute of limitations in the products liability case had not expired and the client was able to secure successor counsel.

The respondent's failure to return the client's files and the scooter for six months after the client discharged him and requested these items and until after the client filed a complaint with bar counsel, constitutes a violation of Mass. R. Prof. C. 1.16(e). The respondent's failure to diligently pursue the products liability case on behalf of the client's minor child

and to keep the client informed constitutes a violation of Mass. R. Prof. C. 1.3 and 1.4. The respondent's failure to execute a written contingent fee agreement in each case constitutes a violation of Mass. R. Prof. C. 1.5(c).

The respondent has been a member of the bar since 1989 and has no prior discipline. The respondent received an admonition conditioned upon his attendance at a CLE course designated by bar counsel.