

ADMONITION NO. 05-14

CLASSIFICATIONS:

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

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

Failure to Cooperate in Bar Discipline Investigations [Mass. R. Prof. C. 8.4(g) and S.J.C. Rule 4:01, § 3]

SUMMARY:

In September 2003, a client retained the respondent to represent him in connection with deportation proceedings. During these proceedings, the client conceded his removability, and the respondent obtained a continuance to explore what relief might be available to his client.

Thereafter, the respondent failed to appear twice for scheduled court appearances in October and November 2003. The respondent did not appear at these hearings due to court obligations elsewhere. He did not file a motion for a continuance of the October date, and although he did file a motion for a continuance of the November date one day before the hearing, the motion was not timely and the Immigration Judge had not acted upon it by the time of the hearing. The hearing was held, and the Immigration Judge ordered the client deported.

The client retained successor counsel, who pursued a direct appeal without success. Successor counsel was, however, successful in challenging the client's state conviction that had formed the predicate for the deportation proceedings. He obtained a reduced sentence for the client and was able to get the deportation proceedings reopened. Ultimately, the client was not deported.

The client also filed a complaint with bar counsel. The respondent failed to respond to bar counsel's inquiries regarding this matter, necessitating the issuance of a subpoena for his appearance at the Office of Bar Counsel in July 2004.

In a second case, the respondent was appointed in September 2003 to represent a client in a criminal matter. In January 2004, following a bench trial, the client was convicted on one of four counts and sentenced to a term of incarceration. The respondent told the client that he would take the steps necessary for the client to pursue an appeal. The respondent filed a timely notice of appeal, along with a motion to withdraw and a motion for appointment of substitute counsel on appeal. However, the court never acted upon these motions and the respondent did not follow up.

The respondent thereafter failed to reply to the client's numerous inquiries concerning the status of the appeal. As a result, the client filed a complaint with bar counsel in November 2004. The respondent again failed to respond to bar counsel's inquiries regarding this matter, necessitating the issuance of another subpoena for his appearance at the Office of Bar Counsel in March 2005. Immediately following the meeting, the respondent took appropriate steps to ensure that the court acted upon the pending motions.

By failing to appear in Immigration Court for scheduled hearings in the first case and by failing to ensure that his motions were acted upon in the second case, the respondent failed to act diligently, in violation of Mass. R. Prof. C. 1.3. By failing to respond to the second client's inquiries, the respondent failed to adequately communicate with his client, in violation of Mass. R. Prof. C. 1.4. By failing to cooperate with bar counsel's investigation in two matters, resulting in the issuance of a subpoena to compel his appearance in both matters, the respondent violated Supreme Judicial Court Rule 4:01, Section 3 and Mass. R. Prof. C. 8.4(g).

The respondent received an admonition for his misconduct, conditioned upon his attendance at a continuing legal education course designated by bar counsel.