

ADMONITION NO. 05-11

CLASSIFICATION:

Conflict from Responsibilities to Another Client or Lawyer's Own Interests [Mass. R. Prof. C. 1.7b]

SUMMARY:

The respondent, a partner in a law firm, authorized the firm's outside collection counsel to bring suit against a client of the firm without ensuring that the firm had withdrawn from representing the client.

The respondent and other lawyers working under his supervision provided substantial legal services to a corporate client and submitted a bill for more than \$80,000. Nine months after the services had been completed, the bill remained unpaid. The firm was continuing to represent the corporate client, however. The respondent was, or should have been, aware that another partner in the firm represented the client in connection with an unrelated litigation matter.

Without ensuring that his partner had withdrawn from the representation, the respondent authorized the firm's collections manager to begin collection proceedings. The collections manager understood the respondent's instructions to mean that the firm's representation had, in fact, terminated. Without further inquiry, she confirmed to outside counsel that the firm's representation of the client was terminated and authorized outside counsel to institute suit and to obtain an ex parte trustee attachment of the client's bank account. The respondent signed an affidavit, filed by outside counsel, which asserted that the firm's client was likely to withdraw its funds if given notice of the motion for ex parte trustee process.

As a result of the respondent's actions, his firm was simultaneously representing the client and suing it in violation of Mass. R. Prof. C. 1.7(b). The respondent's partner did not learn that suit had been filed nor inform his client of his duty to withdraw until one day after the trustee attachment had been granted.

The respondent's failure to ensure that his firm withdrew from the representation before bringing suit was inadvertent. He accordingly received an admonition.