

## ADMONITION NO. 05-10

### CLASSIFICATIONS:

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

Failing to Seek Client's Lawful Objectives or Abide by Client's Decisions to Settle or Enter Plea [Mass. R. Prof. C. Rule 1.2(a)]

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

Responsibilities Regarding NonLawyer Assistants [Mass. R. Prof. C. Rule 5.3]

### SUMMARY:

An elderly client requested the respondent to prepare a will for her. The respondent prepared notes about the content of the will and left the notes with a temporary secretary to prepare a draft. The secretary mistakenly inserted the respondent's name in an article of the will, the result of which was to bequeath to the respondent the client's modest personal property.

The respondent's partner reviewed the draft will and asked the secretary to confirm the inclusion of the respondent's name as a beneficiary. Another secretary then called the client, who stated that she wanted the respondent to have her possessions because he had been good to her and knew what to do with her property. The secretary did not discuss the matter further with the respondent or his partner. Instead, she did not remove the respondent's name from the final draft of the will, and did not give the final draft to the respondent or his partner to review. Pursuant to normal office practice, the secretary mailed the final draft of the will to the client.

The client went to the respondent's office to execute the will. She met with the respondent and requested a modification unrelated to the bequest to the respondent. The respondent reviewed the will at that time, but did not notice the article creating the bequest to him. The respondent instructed a secretary to make the change requested by the client and left to go to court. Pursuant to office procedures, the client executed the will in the presence of the respondent's secretaries.

The respondent's failure to properly review the will before it was executed by his client, and to discuss with the client the provisions of the will violated Mass. R. Prof. C. Rule 1.1 (lawyer shall provide thorough representation and preparation reasonably necessary for the representation), 1.2(a) (lawyer shall carry out client's lawful objectives), and 1.4(b) (lawyer shall explain matter to the extent necessary to enable client to make informed decisions regarding the representation). The respondent's failure to adequately supervise the secretary who prepared the draft will and to supervise the secretaries who aided the client in executing the will violated Mass. R. Prof. C. Rule 5.3(b) (lawyer having direct supervisory

authority over a nonlawyer shall make reasonable efforts to ensure nonlawyer's conduct is compatible with the professional obligations of the lawyer).

In aggravation, the respondent was previously admonished for inadequate preparation in a criminal matter. In mitigation, the error in the preparation of the client's will was rectified immediately, the personal property included as a bequest was of minimal value, and the respondent did not charge the client for the will.

The respondent instituted procedures in his office to require that a lawyer review every will before it is executed and that a lawyer be present at the execution of every will.

The respondent received an admonition for his misconduct.