

ADMONITION NO. 05-06

CLASSIFICATIONS:

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

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

Withdrawal Without Protecting Client or Refunding Fee [Mass. R. Prof. C. 1.16(d)]

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

Failure to Cooperate in Bar Discipline Investigations [Mass. R. Prof. C. 8.4(g)]

Failure to Cooperate in Bar Discipline Investigations [SJC Rule 4:01 §3]

SUMMARY:

The respondent was paid small retainers in two unrelated domestic relations matters. The first, in the amount \$1,500.00, was paid in September 2003 and the second, in the amount of \$700.00, was paid in April 2004. When he failed to diligently pursue these cases, the clients discharged him. The respondent then did not timely return the unearned portions of the retainers or return the files despite repeated requests from the clients. After the clients filed complaints with bar counsel, the respondent also failed to reply to bar counsel's requests for information, necessitating the issuance of a subpoena to compel his appearance.

After meeting with bar counsel in December 2004, the respondent returned the clients' files and refunded the full amounts of each retainer without deduction for work performed.

The respondent's failure to communicate with his clients and to represent them diligently was in violation of Mass. R. Prof. C. 1.3 and 1.4. The respondent's failure to return the unearned portion of his clients' retainers and his failure to return his clients' files upon termination of the representation was in violation of Mass. R. Prof. C. 1.16(d) and (e). The respondent's failure to cooperate with bar counsel was in violation of Mass. R. Prof. C. 8.4(g) and S.J.C. Rule 4:01, §3.

In aggravation, the respondent received an admonition in 2001 for similar misconduct. In mitigation, the respondent had serious family problems that contributed to his neglect of the clients' matters and to his failure to cooperate with bar counsel. During the time period in question, the respondent's father suffered from advanced Alzheimer's disease and a family dispute had arisen concerning guardianship. In addition, the respondent's brother had substance abuse problems and his mother had heart surgery and is in failing health.

The respondent was diagnosed with depression at least in part as a result of these events. Beginning in March 2004, the respondent undertook remedial measures, including therapy and prescribed medication. He also retained an attorney to deal with his family issues.

The respondent accordingly received an admonition for his misconduct, conditioned upon

attendance at a CLE program designated by bar counsel.