ADMONITION NO. 00-20

CLASSIFICATION:
Neglect of a Legal Matter [DR 6-101(A)(3)]

SUMMARY:
On May 24, 1994, the respondent was retained to represent a client in an alien labor certification process and in obtaining permanent residence status. The client was then in the country on an H-1B status, allowing her to work in the country for a limited time. The client resided and was employed in California by a Massachusetts based technology company. On August 10, 1994, the respondent filed the appropriate forms with the State of California Employment Development Department (EDD). After further correspondence, on February 7, 1995, EDD issued its recruitment notice which spelled out the requirements for advertising. The notice required an ad for the position to be published for three consecutive days in a daily newspaper of general circulation. The notice also conspicuously stated that the applicant must return the original tearsheets for each day the ad is published, postmarked within forty five days of February 7, 1995.

On March 21, 1995, the respondent placed the ad with the Los Angeles Times to run on March 23, 24 and 25, 1995, despite a deadline date of March 24, 1995. The tear sheets were returned on May 16, 1995, after the deadline had expired.

On May 10, 1995, EDD notified the respondent in writing that the client's application had been "cancelled" due to the respondent's failure to timely notify the EDD of the respondent's compliance with the advertising requirements of the recruitment notice. The notice was placed in the respondent's file, but apparently not reviewed by the respondent. The cancellation was without prejudice to refiling, but any refiling would require new advertising. The respondent may have been given reason to believe that strict application of the deadline had been orally waived by EDD, although there was no written confirmation of any such waiver.

A copy of the May 10, 1995 cancellation notice was mailed by EDD to the client's employer, who, in turn contacted the client. On May 15, 1995, the client called the respondent and asked what should be done. At the time of the call, the respondent had not examined the file and was unaware of the cancellation and apparently did not understand what the client was asking. The respondent told the client that the respondent had taken care of the matter, believing that the application had been filed and that the missed deadline did not present a problem. The client called in October, 1995, January 1996, March, 1996, twice

in May, 1996 and June, 1996, and each time, the respondent or someone at the firm (incorrectly) told the client that the firm was waiting for a response from the Department of Labor or that the application was on course for approval. The respondent also, from time to time, gave the client anticipated dates for approval of the application. At no time during this period was the file examined or the cancellation notice discovered. The respondent continued under the misapprehension that the application was pending until at least November 1996. On August 30, 1996, the respondent's partner wrote a letter to the Department of Labor requesting the status of what the firm believed to be a pending application. The Department of Labor informed the firm that it could not locate any application pending, but did not inform the firm that the original application had been cancelled. The respondent continued to contact officials, in an effort to discover the status of the matter. In November 1996, the respondent resubmitted the forms and attachments, still unaware of the previous cancellation. In June 1997, not receiving any satisfactory information from EDD or the Department of Labor, the respondent submitted a new application.

In April 1998, the client left her employment (while the new application was still pending) and retained new counsel. In May 1999, new counsel complained to Bar Counsel. The respondent's continued misinformation was the result of her neglect in violation of Canon Six, DR 6-101(A)(3). In mitigation, there does not appear to have been any ultimate harm. The client's interests were protected by her existing H-1B status, which was in effect or extended up to the time the client retained new counsel.

The respondent was admitted in 1982 and is experienced in immigration matters. The respondent received an admonition for her neglect and resulting inadequate client communication.