

ADMONITION NO. 00-16

CLASSIFICATIONS:

Neglecting A Legal Matter [DR 6-101(A)(3)]

Failure to Represent a Client Zealously [DR 7-101(A)(1)(2)]

SUMMARY:

In or around July 1993, an inmate at the Massachusetts Correctional Institution at Norfolk retained the respondent to assist him in pursuing an action that he had filed pro se against the Department of Correction, two of its employees, and various medical providers. The inmate alleged that his civil rights were being violated by the defendants' alleged wanton and reckless failure to provide him with adequate medical care. The inmate paid the respondent a \$2,000 retainer, and the respondent entered his appearance in the action on or about July 30, 1993. The respondent made it clear to the inmate that there was very little likelihood that he would receive any monetary compensation from the defendants. The respondent's goal was to assist the inmate in obtaining treatment for a serious back injury.

The respondent concentrated his efforts on negotiating with counsel for the major medical provider and agreed to dismiss the inmate's claim upon transfer of the inmate to a hospital for treatment. Counsel for the defendant requested that the respondent return a signed stipulation of dismissal. However, the respondent failed to respond to that request.

The respondent had little or no contact with counsel for the other defendants. He filed no discovery requests and failed to respond to a request for interrogatories filed by counsel for one of the medical providers. He also failed to file any opposition to a motion to dismiss, or in the alternative, for summary judgment that was served upon him by counsel for the Department of Correction. Consequently, the motion was filed with the court on October 21, 1993.

The motion to dismiss was allowed as to all defendants on November 15, 1993, although it should only have been allowed as to the Department of Correction and its employees. The other defendants had not filed a motion to dismiss nor had they joined in the Department of Correction's motion. Despite the court's error, the respondent took no action to reinstate the inmate's claims as to any defendant. In or around this same period, the inmate was transferred to a hospital and began receiving medical treatment. The respondent contends that he took no action because the transfer assured that the inmate would receive

proper treatment and that the inmate consented to the dismissal. The inmate does not agree that he was informed of or consented to the dismissal. His claim in this respect is supported by the fact that he subsequently consulted other counsel who spoke with the respondent and then reported that it appeared that the respondent had done a great deal of work on the case and that the respondent would continue to try and get the inmate necessary medical treatment as well as some compensation for his injuries.

Subsequent to the dismissal, the inmate contacted the respondent and again expressed his dissatisfaction with the medical treatment that he was receiving. The inmate had not received the diagnostic tests that he had been promised. Accordingly, the respondent served counsel for the defendant medical provider with a motion for court-ordered physical examination. However, the respondent did this without taking any action to vacate the dismissal of the case. The defendant's counsel filed an opposition to the motion, arguing that the case had been dismissed as to all defendants. The motion and opposition were filed in court on March 4, 1994. The inmate then received the diagnostic tests that he desired and no further action was taken on the motion.

The respondent did not adequately communicate with his client, and did not adequately explain exactly what services he intended perform. He did not make it clear to the client that he only intended to pressure the defendants into providing adequate medical care and that he did not intend to pursue the inmate's civil rights claims. If the client did not agree, then the respondent either should have moved to vacate the dismissal and continued to prosecute the case or should have withdrawn. The respondent's conduct in this matter constituted neglect and failure to represent the client zealously in violation of Canon Six, DR 6-101(A)(3) and Canon Seven, DR 7-101(A)(1) and (2).

The respondent has been a member of the bar since 1974. He has no prior discipline. Accordingly, he received an admonition conditioned upon his attendance at a CLE course designated by Bar Counsel.