
ADMONITION NO. 00-04**CLASSIFICATION:**

Failure to Provide Competent Representation [Mass. R. Prof. C. 1.1]

SUMMARY:

On August 23, 1998 the respondent met with a potential client to discuss a possible claim against a national department store chain based on allegations that the woman and her twelve-year-old companion were not provided timely service at a Boston retail store on July 14, 1998 on account of her race.

There is irreconcilable dispute between the client and the respondent regarding the scope of the respondent's undertaking to represent the client as a result of the meeting. The client understood that the respondent was representing her and would file the necessary administrative and civil claims. The respondent claims that he undertook only to review the matter, do legal research and wait to determine if there were any cognizable and provable emotional damages. The respondent did not delineate the scope of the representation in any confirmatory letter or fee agreement.

At or shortly after the initial consultation, the client gave to the respondent a copy of an apology letter from the retail establishment, an unused gift certificate for \$50.00, a narrative of the incident and a check for \$200.00 to be used to order a copy of a video from NBC Dateline, which had recently aired an undercover expose of discrimination in service at retail stores.

At the meeting of August 23, 1998, the respondent informed the client that there was a general three-year statute of limitations for tort claims. The respondent was unaware, and did not inform the client, of a six month statute of limitations for filing a complaint with the Massachusetts Commission Against Discrimination (MCAD).

Furthermore, the respondent was unaware that the filing of a complaint with MCAD is a jurisdictional prerequisite to filing a claim in court alleging a G.L. c. 151B violation. The respondent met with the client on two subsequent occasions and did not know, and thus did not inform, the client of these facts.

On May 31, 1999 the client filed a pro se request for investigation with MCAD. On July 16, 1999 MCAD dismissed the request because it was not filed within six months and accordingly MCAD lacked subject matter jurisdiction. Shortly thereafter, the client complained to Bar Counsel that she was unable to find other counsel to pursue her claim.

The respondent was admitted in 1990 and concentrates in the area of patent law. He had no prior experience in discrimination matters. The respondent admits that he should have researched whether there were any special statutes of limitation or issues as to exhaustion of administrative remedies issues with respect to discrimination matters. The respondent claims, and the client disputes, that the client told the respondent that she was seeking assistance elsewhere regarding her administrative claims. Regardless, the respondent did not communicate that there might be a special limitation periods applicable to discrimination complaints. To the contrary, the respondent told the client that the tort limitations period was three years.

The respondent's conduct in handling a matter, even on a limited basis, without adequately researching the law or associating with more experienced counsel, was in violation of Mass. R. Prof. C. 1.1. The respondent has no prior discipline. Accordingly, the respondent received an admonition conditioned on attendance at a CLE program designated by Bar Counsel.
