

**ADMONITION NO. 99-20**

**CLASSIFICATIONS:**

Handling Legal Matter When Not Competent

[DR 6-101(A)(1)]

## Handling Legal Matter Without Adequate Preparation

[DR 6-101(A)(2)]

## Neglecting a Legal Matter

[DR 6-101(A)(3)]

### **SUMMARY:**

On June 9, 1994 the respondent as counsel to the named executor filed a petition in Probate Court for administration of the will of a Massachusetts decedent. The estate was simple, consisting primarily of cash in a safe deposit box and bank accounts. The total estimated value of the estate was approximately \$115,000. The will made eight specific and equal bequests.

On June 24, 1994 the respondent wrote to the legatees under the will and informed each of his intention to complete an inventory and make substantial partial distributions on or before September 14, 1994. The respondent did not transmit any account or partial distributions prior to September 14, 1994. After receipt of inquiries from at least two of the legatees, on November 28, 1994 the respondent wrote and stated that a \$10,000 partial distribution would be made by December 15, 1994. When this too was not done and after receipt of more protests, on February 13, 1995 the respondent made eight \$10,000 partial distributions. The same process then repeated with respect to the second set of partial distributions. On December 4, 1996, after more written and oral protests from the legatees, the respondent transmitted a second set of partial distributions in the amount of \$4,500 each. The respondent also indicated his intent to finalize the estate by January 1997. At no time between June 24, 1994 and December 4, 1996 did the respondent return the inventory to the Probate Court or file annual accounts.

On November 3, 1996 one of the legatees, a resident of Scotland, died and her daughter made demand for her mother's share of the estate. In late December 1996 the daughter provided to the respondent the information that he had requested proving that she was entitled to her mother's share, and in March 1997 the respondent orally told the daughter that she would promptly receive her mother's share of the distribution that the other legatees had received in December 1996. On May 12, 1997 the daughter wrote to the respondent and protested the delay. On July 23, 1997 the respondent finally made the \$4500 distribution to the daughter.

Contrary to his promise, the respondent did not finalize the estate by January 1997 and in March and April, 1998 two of the legatees filed a complaint with Bar Counsel. The respondent retained counsel and the estate was finalized by early June 1998. The finalization of the estate included filing an estate tax return (no estate tax due), obtaining and filing an estate tax closing letter, filing fiduciary tax returns for each year of administration, filing the inventory, filing a first and final account with assents and making final distributions. Final distributions of \$932.67 each were made on June 8, 1998. Bar Counsel's review of the maintenance of the estate account showed no irregularities beyond the delays in making distribution.

The respondent's neglect (prior to January 1, 1998) of a legal matter entrusted to him was in violation of Canon Six, DR 6-101(A)(3).

In a second unrelated matter, the respondent neglected a federal civil case, resulting in the dismissal of his client's claim. On November 11, 1986 the client retained the respondent pursuant to a written contingent fee agreement. The client alleged that she was entitled to \$5000 in life insurance benefits under a group plan of insurance offered by her deceased husband's employer. On July 6, 1988 the respondent filed a civil complaint in state court on behalf of the client in her capacity as administrator against her deceased husband's employer and the life insurance company. The respondent did not effectuate service of process until May 1990. Upon receipt of service, on June 12, 1990, both defendants filed a joint removal of the action to the U.S. District Court, District of Massachusetts. Removal was proper because the life insurance

plan was regulated by ERISA (29 U.S.C. § 1132(a)(3)(b)(ii) over which the federal courts had exclusive jurisdiction. On June 19, 1990 the defendants filed their answers in the federal court.

On August 13, 1991 the Court entered on the docket notice of intent to dismiss within thirty days for failure to prosecute. On September 12, 1991 the respondent filed an affidavit in opposition to dismissal. However, it was the obligation of the respondent to take some action to move the case forward. The respondent was unfamiliar with federal procedure and did not consult with more experienced counsel. On September 4, 1992 the court entered on the docket the notation "case closed". Under court rule, the closing of the case is without prejudice. The respondent did not receive notification that the case had been closed but admits that he did not check the docket again until July 1995 because he was still waiting for a trial date. The respondent claims that, when he checked the docket in 1995, he did not see a docket entry that the case had been closed and that he believed the case was still pending.

The client filed her complaint with Bar Counsel in March of 1998 believing that the case was still active. On May 6, 1998 the respondent filed a motion to re-open and remand to state court. The motion was denied.

The respondent's neglect, inadequate preparation and handling a matter that he was not competent to handle was in violation of Canon Six, DR 6-101(A)(1),(2) and (3). In mitigation, the respondent paid the client the value of her claim in May 1998 and she is satisfied.

The respondent has been a member of the Bar since 1957 with no prior discipline. He is now semi-retired. He accordingly received an admonition for the above misconduct.