

## **ADMONITION NO. 21-02**

### **CLASSIFICATIONS:**

Failing to Communicate Adequately with Client [Mass. R. Prof. C. 1.4(a)(3)]

Failure to Timely Communicate Basis of Fee [Mass. R. Prof. C. 1.5(b)]

### **SUMMARY:**

The respondent was hired by a client to represent her in a Summary Process (Eviction) action for non-payment of rent, which had been filed by her landlord. The respondent intended to seek his attorney's fee from the landlord. He did not provide the client with a written fee agreement or otherwise communicate to the client in writing the scope of the representation or the rate or basis of the fee.

The respondent filed an answer and counterclaims on behalf of the client and capably represented her at trial in September 2017. In November 2017, the court found in favor of the client on the eviction complaint and certain counterclaims and ordered the plaintiff/ landlord to pay the client \$14,525.75, as well as attorney's fees.

In April 2018, the plaintiff filed a Notice of Appeal, and on May 28, 2019, she filed a brief with the Appeals Court. On July 23, 2019, the respondent filed a motion to extend the due date for the brief of the appellee, which was allowed, thereby giving the respondent until August 27, 2019 to file a responsive brief. The respondent then reviewed the appeal and ascertained that even if the landlord prevailed, the court would only reduce the client's judgment by a very small percentage of the judgment. He decided that it did not make sense to file an opposition to the appellant's brief. The extent to which the client agreed with the respondent's decision was a matter of dispute.

After the deadline to submit the brief, the client checked the court website and discovered that the respondent had not yet filed a brief. On several occasions between August 2019 and November 2019, the client inquired of the respondent by email or text why the brief had not been filed even though the deadline had passed. The respondent replied to only some of those inquiries and failed to clearly convey to the client that he did not intend to file a brief. In March 2020, the appeals court issued a judgment which reduced the client's damages by \$470.00. The remaining \$14,055.75 of the judgment was affirmed.

By failing to adequately communicate to the client the status of the opponent's appeal, the respondent violated Mass. Rule Prof. C. 1.4(a)(3). By failing to enter into a written fee agreement with the client or communicate the scope of the representation and basis or rate of his fee in writing within a reasonable time after commencing the representation, the respondent violated Mass. R. Prof. C. 1.5(b).

The respondent received an admonition for his misconduct.