

ADMONITION NO. 20-14

CLASSIFICATION:

Advancing Frivolous Claim or Defense [Mass. R. Prof. C. 3.1]

SUMMARY:

The respondent represented the unmarried father of a minor child who was involved in a custody dispute with the child's mother. Through other counsel, the client filed a petition for custody in 2014 in the state where, at the time, both he and the child's mother lived. During the pendency of such proceedings, the client relocated to Massachusetts, taking the child with him. In response, the child's mother sought and obtained an injunction requiring the client to return the child to the forum state.

In 2018, as part of an effort to avoid enforcement of the state court injunction, the respondent appeared in the case and filed a notice of removal to the U.S. District Court for that state. The notice of removal cited 28 U.S.C. § 1331 (federal question) and § 1332(a) (diversity of citizenship) as the bases for federal court jurisdiction.

For several reasons, the respondent's notice of removal lacked any basis in law. First, because the client was the petitioner rather than the defendant in the state court action, he was not eligible to remove the case to federal court. Second, because the applicable deadline for removing the case was no more than one year from the commencement of the state court proceedings (see 28 U.S.C. § 1446(c)(1)), the notice of removal was untimely. Third, because the custody case was not an action for damages, the \$75,000 "amount in controversy" requirement for diversity jurisdiction was not met (see 28 U.S.C. 1332(a)). Fourth, because the original petition for custody did not raise any questions or grounds for relief under federal law, there was no subject matter jurisdiction under 28 U.S.C. § 1331. Finally, the respondent's attempt to remove the custody case to mount a collateral attack on the state court's injunction against the client violated both the *Rooker-Feldman* doctrine and the domestic relations exception to federal jurisdiction.

Based on the above-described deficiencies in the respondent's notice of removal, the federal court issued a *sua sponte* order remanding the custody case to the state court. Thereafter, the federal court conducted proceedings to determine whether the respondent should be sanctioned under Fed. R. Civ. P. 11 for seeking removal of the case to federal court. At the conclusion of those proceedings, the court found that the respondent had violated Rule 11. Among other things, Rule 11 requires an attorney to certify that her legal

contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law. The court imposed a monetary sanction on the respondent and ordered her to attend a program on legal ethics.

The respondent participated in the Rule 11 proceedings and fully complied with the ensuing sanctions order.

By filing a notice of removal for which there was no basis in law, the respondent violated Mass. R. Prof. C. 3.1.

The respondent was admitted to the bar in 2013. She received an admonition for her misconduct.