

ADMONITION NO. 25-21

CLASSIFICATIONS:

Handling Legal Matter Without Adequate Preparation [Mass. R. Prof. C. 1.1]

Conduct Prejudicial to the Administration of Justice [Mass. R. Prof. C. 8.4(d)]

SUMMARY:

In August 2021, the respondent was appointed to represent a criminal defendant who had been indicted for first-degree murder together with a co-defendant. The respondent's client requested that his fiancée, who had testified in the grand jury on behalf of the Commonwealth, be kept informed of court proceedings and have direct contact with the respondent. The respondent agreed and communicated with the fiancée through phone calls and text messages.

Jury selection for the defendant's trial began on May 31, 2022. By this time, the Commonwealth had lost contact with the defendant's fiancée, who the Commonwealth claimed to be a material witness for the trial. The respondent was unaware that the fiancée had stopped communicating with the Commonwealth and did not have an address for her.

Within the first two weeks of jury selection, the Commonwealth twice requested that the trial be continued based on the unavailability of the fiancée and another witness. In open court during his argument to continue the trial, the prosecutor asked both defense attorneys whether they had been in contact with the two missing witnesses in the previous two months. Though not required to answer the question, both defense attorneys stated that they did not know where the witnesses were. In addition, the respondent stated that she had communicated with the fiancée "a couple of months ago," when in fact she had spoken to her the week prior. The respondent made the statement in the mistaken belief that the focus of the inquiry was the timing of when she last knew of the fiancée's whereabouts. Immediately after the respondent's misstatement, the Commonwealth, having knowledge of the respondent's recent contact with the fiancée, renewed its motion for a continuance and filed an affidavit under seal that provided evidence of the respondent's contact with the fiancée. At this point, the court suspended the proceeding for a second call of the case later in the day.

During the second call of the case, the court revisited the Commonwealth's motion to continue based on the fiancée's unavailability. In response, the respondent advocated for her client, who opposed a continuance. The respondent did not, however, correct her prior misstatement about the timing of her communication. Although not directly asked by the court, the respondent should have known that the court was seeking such a correction or explanation. The following business day, the respondent filed a motion to withdraw.

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The respondent's conduct in this matter in failing to correct her unintentional misstatement to the court when she knew or should have known it was required, constituted a violation of Mass. R. Prof. C. 1.1 and 8.4(d).

The respondent was admitted to the Massachusetts bar on June 12, 1986, and has no prior disciplinary history. The respondent received an admonition for her misconduct.