

ADMONITION NO. 25-13

CLASSIFICATIONS:

Handling Legal Matter when Not Competent or without Adequate Preparation
[Mass. R. Prof. C. 1.1]

Failing to Act Diligently [Mass. R. Prof. C. 1.3]

SUMMARY:

The respondent was retained by a client to represent him in a family law matter involving his minor child. The client asked the respondent to respond to complaints filed by the child's mother seeking orders of contempt and modification with respect to an existing parenting time order. By the time the respondent was retained, the deadline for his client to file answers to the complaints had passed. At the client's direction, the respondent filed his client's answers hoping that they would nonetheless be accepted by the court. In doing so, however, the respondent failed to include a motion for late filing as was required in the circumstances. Thus, the court rejected the pleadings. The respondent was unaware of the notice of rejection because he was not regularly monitoring his email and mail. He therefore did not re-file the pleadings, with a motion for late filing or otherwise.

The mother's complaints proceeded in due course. Both parties appeared at the pretrial conference and reported the matter to be ready for trial. Shortly thereafter, however, the child's mother agreed to dismiss both of her complaints. The respondent incorrectly assumed that the child's mother, who was not represented by counsel, would notify the court of the dismissal. The child's mother did not notify the court, and the respondent never confirmed that the court had been notified. The matter therefore remained on the court's docket, scheduled for trial.

Several months later, the court issued pretrial orders which, among other things, set dates for a status conference and trial and required the parties to notify the court if the matter had settled. The respondent did not review the orders or otherwise advise the court that the matter had been resolved by the parties.

The respondent, his client, and the child's mother did not appear at the status conference. The court emailed the respondent and requested an explanation for his failure to appear at the conference. The respondent did not review the email, and did not contact the court.

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The court called the matter for trial on its scheduled date. Again, based on a collective understanding that the case had concluded, the respondent, his client, and the child's mother did not appear for the proceeding. The court dismissed the matter finding that the child's mother had failed to prosecute her claims.

The client was not harmed by the respondent's failure to file his client's answers to the complaints for contempt and modification as described above because the complaints were ultimately dismissed by the child's mother.

The respondent has admitted his misconduct and is remorseful that his inattention caused the court's time to be wasted. The respondent fully cooperated with bar counsel's investigation.

The respondent's failure to submit a motion for late filing with his client's pleadings and to monitor his mail and email which resulted in his failure to appear at the status conference and on the trial date violated Mass. R. Prof. C. 1.1 and 1.3.

In mitigation, during the time of the misconduct, the respondent had multiple surgeries and difficult recovery periods which contributed to his inattention towards his law practice in general and his client's case in particular.

The respondent was admitted to the Massachusetts bar on December 2, 2005, and has no prior disciplinary history. The respondent received an admonition for his conduct.