

## **ADMONITION NO. 25-14**

### **CLASSIFICATIONS:**

Illegal or Clearly Excessive Fee or Unreasonable Expense [Mass. R. Prof. C. 1.5(a)]

Withdrawal Without Protecting Client or Refunding Unearned Fee or Expense [Mass. R. Prof. C. 1.16(d)]

### **SUMMARY:**

In October 2022, the respondent was retained to represent a client in her divorce matter, and had the client sign a hybrid, flat fee agreement. The flat fee portion of the agreement was for \$5,000 and improperly designated as non-refundable. Such a fee agreement improperly interfered with the client's right to discharge the respondent as her attorney at any time and her right to the return of any unearned fee. Shortly after the representation began, the client paid the \$5,000 flat fee to the respondent.

The respondent performed some work on the matter, including drafting a divorce complaint. In November 2022, the client instructed the respondent that she wished to wait on the divorce filing and he stopped working on her case. At the time, and upon the client's request, the respondent provided the client with an itemization of his earned legal fees to date, which totaled \$1,956.00. He performed no future work on the matter.

In February 2023, the client informed the respondent that she was not proceeding with the divorce and requested a refund of the unearned portion of the fee. The respondent refused, citing the non-refundable clause in the fee agreement. After making several more requests for the return of the unearned fee, the client filed a complaint with Bar Counsel. After receiving the client's complaint and speaking with Bar Counsel, the respondent refunded the unearned fee.

By entering into a fee agreement with a non-refundable flat fee clause, the respondent violated Mass. R. Prof. C. 1.5(a).

By failing to promptly refund the unearned portion of his fee, the respondent violated Mass. R. Prof. C. 1.16(d).

The respondent was admitted to practice in Massachusetts in 1996 and has no prior discipline. He received an admonition for his misconduct.