

ADMONITION NO. 14-03

CLASSIFICATIONS:

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

Failing to Seek Client's Lawful Objectives or Abide by Client's Decisions to Settle or
Enter Plea [Mass. R. Prof. C. 1.2a]

Failing to Communicate Adequately with Client [Mass. R. Prof. C. 1.4]

SUMMARY:

In February 2010, a client who had been terminated from his position as a municipal employee in Massachusetts, engaged the respondent to represent him seeking reinstatement to his position and income lost as a result of his transfer to a less remunerative position. The client was a member of a union, and his position was subject to a collective bargaining agreement (Agreement). The client had been "bumped" from his position by another employee who claimed more seniority, a claim that the client disputed.

The Union denied the client's request for representation, maintaining that the client's "bump" was authorized by the terms of the Agreement and that the seniority issue had been resolved by a 1998 grievance decision that concluded that certain types of part-time services, such as those at issue in this matter, would not count towards seniority. The client then filed his own grievance with the City, which was denied.

At this point, the client retained the respondent. The deadline for filing charges of prohibited practices with the Massachusetts Department of Labor Relations (DLR) was June 17, 2010, six months from the date of the notice of termination.

As a tactical matter, the respondent hoped to proceed in federal as opposed to state court on behalf of his client, due to the political position and perceived influence of the employee who had "bumped" into the client's original position. However, the respondent failed to adequately research the laws and procedures for bringing prohibited action charges against the City and Union. On June 16, 2010, the

respondent filed a civil complaint in U.S. District Court, asserting claims against the City and the Union under the National Labor Relations Act, which does not apply to employees of states and municipalities. The City and the Union each filed motions to dismiss the federal claim based on lack of jurisdiction. After hearing arguments, the Court issued an order from the bench, granting the motions to dismiss.

Although aware of the six-month deadline for filing claims at the DLR, the respondent did not preserve his client's rights to proceed at the DLR by simultaneously filing timely prohibited action charges against the City and Union at the DLR. The respondent discussed with his client the decision to file the case in federal court. However, he did not fully consult with the client about the decision not to simultaneously file state charges, and obtain the client's consent after consultation to missing the deadline for filing at the DLR.

On September 2, 2010, the respondent filed charges on behalf of his client at the DLR against the City and Union. Both the City and the Union filed responses with the DLR requesting that the charges be dismissed as not timely filed. After an in-person investigation conference, the DLR issued a decision dated January 28, 2011, allowing the charges against the Union to go forward, citing actions that had taken place after the termination of the client's original position. On January 28, 2011, the DLR dismissed the charges against the City both as untimely and on the merits. The dismissal order notified the charging party that an appeal could be filed within ten days of receipt of the order pursuant to the governing state regulations.

The respondent met with the client on February 27, 2011, to review the two decisions received from the DLR. The respondent failed to fully explain to the client the consequences of not appealing the dismissal of charges against the City, including that the DLR could only order the City, not the Union, to reinstate the client to his original position, and then only if the client prevailed against the City. Based on his misunderstanding of the ramifications of his decision, the client instructed the respondent not to appeal the dismissal of the charges against the City and to proceed only with the pending claim against the Union.

Shortly thereafter, but after the ten-day limit for filing an appeal had expired, the client engaged successor counsel to represent him, and terminated the respondent's representation. Successor counsel attempted unsuccessfully to obtain permission from the DLR to file the appeal late. Ultimately, the client voluntarily dismissed the charges against the Union.

By failing to conduct sufficient and necessary research into the client's claims and avenues for relief and by failing to handle the matter with the knowledge, skill, thoroughness, and preparation reasonably necessary for the representation, the respondent violated Mass. R. Prof. C. 1.1.

By failing to file a timely complaint on his client's behalf against the City with the DLR, the respondent failed to seek the lawful objectives of his client through reasonably available means permitted by law, in violation of Mass. R. Prof. C. 1.2(a).

By failing to adequately explain to the client the consequences of not filing a timely claim at the DLR, and that the dismissal of the complaint against the City prevented the client from being reinstated to his original position, the respondent violated Mass. R. Prof. C. 1.4(b).

The respondent was admitted to practice in 1981 and has no prior discipline. In mitigation, he fully refunded the fees the client had paid him. The client's chances of success, even had the claim been properly processed, were at best problematic. The respondent accordingly received an admonition for his conduct.