

COMMONWEALTH OF MASSACHUSETTS
BOARD OF BAR OVERSEERS
OF THE SUPREME JUDICIAL COURT

BAR COUNSEL,

Petitioner,

v.

Kenneth J. DiFazio, Esq.,

Respondent

Public Reprimand No. 2024-4

ORDER OF PUBLIC REPRIMAND

This matter came before the Board on a Petition for Discipline and a Stipulation of the Parties waiving hearing and requesting that the matter be resolved by the imposition of a public reprimand. On March 11, 2024, the Board voted to accept the stipulation of the parties and their joint recommendation. It is ORDERED and ADJUDGED that Kenneth J. DiFazio, be and he, is publicly reprimanded. A summary of the charges giving rise to the reprimand is attached to this order.

Whereupon, pursuant to Supreme Judicial Court Rule 4:01, Section 8(3), and the Rules of the Board of Bar Overseers, Section 3.56, it is ORDERED AND ADJUDGED that Kenneth J. DiFazio, be and hereby is PUBLICLY REPRIMANDED.

BY: /s/ Rita Balian Allen
Rita Balian Allen, Member
BOARD OF BAR OVERSEERS

DATED: May 7, 2024

KENNETH J. DIFAZIO

BBO # 556451

Public Reprimand No. 2024-4

Order (public reprimand) entered by the Massachusetts Board of Bar Overseers of the Supreme Judicial Court on May 7, 2024.

The respondent stipulated to a public reprimand for failing to obtain informed consent confirmed in writing to the conflict of interest established by the concurrent representation of clients who had directly adverse interests in certain real property, and for his failure to communicate in writing the scope of his representation and the basis or rate of his fee in three matters.

SUMMARY¹

The respondent was retained on or about August 19, 2021 to represent an individual (“Client 1”) concerning his potential interests in certain real property that had been owned by Client 1’s late brother. Client 1 had continued to live at the property following his brother’s death in 2015, and Client 1 informed the respondent that it was his desire to continue to do so. The respondent did not communicate in writing to Client 1 the scope of the representation and the basis or rate of the fee and expenses for which he would be responsible.

The respondent learned that Client 1’s brother had died intestate, as did the late brother’s daughter who had a surviving son, which left three living heirs who possessed an equal interest in the subject property (*i.e.*, the late brother’s two sons and one grandson). On behalf of Client 1, the respondent contacted two of the heirs and began discussing the possibility of relinquishing all or some of their interest in the property to Client 1 as compensation for his ongoing care of the property and payment of many mortgage payments. To resolve title issues, however, the respondent determined that it would be necessary to probate Client 1’s late brother’s estate and the estate of the late brother’s late daughter.

On or about August 30, 2021, the respondent agreed to represent the personal representative of the estate of Client 1’s late brother (“Client 2”). On or about October 16, 2021, the respondent agreed to represent the personal representative of the estate of the late brother’s daughter (“Client 3”). The respondent orally informed Clients 2 and 3 that he would bill for his services upon the sale of the property.

There was an obvious conflict in the respondent’s simultaneous representation of Client 1 - - who wished to remain on the property - - and the directly adverse interests of Clients 2 and 3 - - who had an ownership interest in the property. The respondent did not obtain from each client their informed consent to the conflict of interest confirmed in writing. Moreover, the respondent did not communicate in writing to Clients 2 and 3 the scope of the representation and the basis or rate of the fee and expenses for which they would be responsible.

¹ Compiled by the Massachusetts Board of Bar Overseers’ Office of General Counsel based on the record of proceedings before the board.

On or about August 25, 2022, on behalf of Clients 2 and 3, the respondent sent written notice to Client 1 demanding that he leave the property so that it could be sold. Consequently, Client 1 vacated the property. Client 1 was harmed by having to vacate the property without being afforded the opportunity to secure unconflicted counsel.

The respondent stipulated that the forgoing misconduct violated Mass. R. Prof. C. 1.5(b)(1) and 1.7(a) and (b).

This matter came before the Board of Bar Overseers on a stipulation of the parties and a joint recommendation for discipline in the form of a public reprimand. At its meeting on March 11, 2024, the Board of Bar Overseers voted to accept the stipulation and to administer a public reprimand to the respondent.