

THOMAS R. MULLEN

Order (public reprimand) entered by the Board December 17, 2002.

SUMMARY¹

On October 19, 1993, the respondent petitioned the Norfolk Probate and Family Court to appoint him conservator for a ward who was residing at a nursing home. The ward assented to the petition. On November 2, 1993, the respondent was appointed conservator, and he served in that fiduciary position until July 1, 1998, when a successor guardian was appointed.

On November 2, 1993, when the respondent was appointed conservator, the ward's estate consisted of a checking account totaling approximately \$38,285.00 and a savings account totaling approximately \$7,400.00, together with furnishings of nominal value. After his appointment as conservator, the respondent prepared and filed a Medicaid application on behalf of the ward. In June of 1994, the Division of Medical Assistance deemed the ward eligible for Medicaid coverage.

Between 1993 and 1998, the respondent received on behalf of the ward social security payments totaling \$624.00 per month. Between 1993 and 1998, the respondent also received on behalf of the ward retirement benefit payments from the Norfolk County Retirement System totaling \$52.13 per month ("pension checks").

The respondent failed to promptly deposit a number of pension checks he received on behalf of the ward to a client funds account, instead holding some checks for over two years before depositing them to his IOLTA account. The respondent also was frequently delinquent in his payments to the nursing home on behalf of the ward, although the ward's estate had sufficient funds to cover the payments due.

Massachusetts General Laws c. 206, § 1, requires a conservator to "render an account relative to the estate in his hands at least once a year and at such other times as shall be required by the court, until his trust is fulfilled." The respondent failed to render accounts regarding the conservatorship estate for the years 1993 through 1998. On June 19, 1998, the nursing home petitioned the Probate Court for an order obligating the respondent to render an inventory and an accounting regarding the ward's estate. On June 19, 1998, the Probate Court ordered the respondent to render an inventory and accounting regarding the conservatorship estate on or before July 1, 1998.

In his capacity as conservator of the ward, the respondent failed to maintain complete records of the receipt, maintenance, and disposition of all funds and property he received on behalf of the ward. On June 30, 1998, the respondent paid \$8,750.00 to the ward's estate from his own funds to reimburse the estate for expenditures on behalf of the ward for which he had not maintained adequate documentation.

On June 30, 1998, the respondent filed his inventory and his first through fifth accounts as conservator with the Probate Court. On July 1, 1998, the Probate Court appointed a guardian ad litem for purposes of reviewing the inventory and first through fifth accounts filed on June 30, 1998 by the respondent as conservator. Between July 1, 1998 and October 13, 1998, the

guardian ad litem asked the respondent to document his receipts and expenditures as conservator. The respondent was unable to provide documentation of the receipts and expenditures due to his failure to preserve the documentation.

On about October 13, 1998, the guardian ad litem filed a report concerning her review of the respondent's first through fifth accounts as conservator. The guardian ad litem recommended that the respondent be required to reimburse an additional \$7,655.33 to the ward's estate for receipts and expenditures noted in the accounts for which the respondent had not maintained invoices or other supporting documentation. Upon receipt of the guardian ad litem's report, the respondent and the guardian ad litem reached an agreement whereby the respondent agreed to pay \$7,655.00 to the ward's present guardian, to pay the guardian ad litem's fee of \$4,750.00, and to file amended first through fifth accounts regarding the conservatorship of the ward.

On about November 3, 1998, the Probate Court entered an order adopting the agreement of the parties by which the respondent was required to pay \$7,655.00 to the ward's present guardian, to pay the guardian ad litem's fee of \$4,750.00, and to file amended first through fifth accounts regarding the conservatorship of the ward. On about March 16, 1999, after the respondent had complied with the terms of the order, the Probate Court entered a judgment allowing the amended first through fifth accounts of the respondent as conservator of the ward.

By failing to promptly deposit checks he received on behalf of the ward and to make timely payments to the nursing home on behalf of the ward, the respondent violated Canon Six, DR 6-101(A)(3); Canon Seven, DR 7-101(A)(1) and (2); and Canon Nine, DR 9-102(B)(2). By failing to maintain complete records of the receipt, maintenance, and disposition of all funds and property he received on behalf of the ward, the respondent violated Canon Six, DR 6-101(A)(2) and (3), and Canon Nine, DR 9-102(B)(3), as to conduct occurring before January 1, 1998, and Mass. R. Prof. C. 1.15(a), as to conduct occurring on and after January 1, 1998. By failing to render timely accounts regarding the conservatorship estate, the respondent violated Canon Six, DR 6-101(A)(3), and Canon Nine, DR 9-102(B)(3).

The respondent was admitted to practice in 1977. In aggravation, the respondent received an admonition in 1995 for deceptive advertising. Admonition No. AD-95-4, 11 Mass. Att'y Disc. R. 318 (1995). In mitigation, during the period of his conservatorship of the ward, the respondent was undergoing a difficult emotional time because of the break-up of his first marriage and his resulting divorce. In addition, the respondent acted immediately to address the problems with his accounts that were identified by the guardian ad litem, and without judicial intervention the respondent made prompt repayment from his own funds for all contested expenditures for which he had not maintained adequate backup documentation. Both the guardian ad litem and the Probate Court accepted the respondent's amended first through fifth accounts as conservator of the ward, and the ward's care was not compromised as a result of the respondent's bookkeeping problems. After Bar Counsel initiated its investigation, the respondent engaged a bookkeeper and an accountant to assist him in the maintenance of his client trust accounts, and made needed changes to his record-keeping practices. The respondent also agreed to attend a continuing legal education class designated by Bar Counsel on ethics and law office management.

The matter came before the Board of Bar Overseers on a stipulation of facts and a joint recommendation for discipline. The Board of Bar Overseers accepted the parties' recommendation and imposed a public reprimand on December 16, 2002.

¹ Compiled by the Board of Bar Overseers based on the record of proceedings before the Board.

