

IN RE: PHILIP J. NORTON, JR.

Order (public reprimand) entered by the Board August 20, 2003.

SUMMARY<sup>1</sup>

On June 8, 1992, an elderly man died, leaving a will that nominated the respondent and another individual to serve as co-executors of his estate. The decedent's assets included three real estate properties in Middleborough and a house in Edgartown, together valued at approximately \$442,775, as well as approximately \$30,000 in other assets. The will directed the executors to sell all of the decedent's real property and to pay the proceeds from the sale of the Middleborough properties to the trustee of a testamentary trust for the benefit of the decedent's brother for his life. The will also provided for \$310,000 in charitable bequests, and \$10,000 in specific bequests, and provided that the residue of the estate would pass to the decedent's godchildren.

Shortly after the decedent's death, an attorney who was holding the decedent's last will contacted the respondent. On or about June 17, 1992, the respondent informed the attorney that he would commence probate proceedings, and the attorney mailed the original will to the respondent. M.G.L. c. 191, § 13, required the respondent to deliver the will into the probate court within thirty days of the decedent's death. The respondent did not file the will with the probate court until April 13, 1994, when he filed a petition for probate of the will and for appointment of himself as executor, and a declination from the other nominated co-executor. On May 18, 1994, the probate court appointed the respondent executor of the estate.

The respondent did not file the M-706 estate tax return or pay the estate tax until November 7, 1994. As a result, the estate incurred \$4,105.80 in penalties and \$2,351.25 in interest charges. The respondent paid the taxes, penalties, and interest from his personal funds because he had not yet collected the estate's liquid assets.

On November 17, 1994, the respondent sold one Middleborough property, and deposited the total proceeds of \$124,217.72 to his non-interest-bearing client funds account (IOLTA account), rather than to an estate account. In January 1995, the respondent properly distributed all but approximately \$9,000 to the trustee of the testamentary trust. On or about May 26, 1995, the respondent used the remaining funds to pay the real estate taxes and accrued interest and penalties on two other properties in order to avoid foreclosure proceedings.

From June 1995 to May 1998, the respondent took no further steps of substance to complete the administration of the estate. His neglect included his failure to collect the estate's liquid assets and to open an estate account, to timely pay real estate taxes on the remaining Middleborough properties, to sell the remaining Middleborough properties or transfer them to the testamentary trust, to sell the vacant Edgartown property, and to arrange for the sale of the tangible personal property.

On May 21, 1998, the respondent sold the Edgartown property, and deposited the net proceeds of \$229,000 to his IOLTA account. In May and June of 1998, the respondent properly disbursed funds for the expenses of the sale and to the charitable and specific legatees,

leaving him with a balance of approximately \$23,000, which he did not distribute until 2001.

Between 1992 and 1997, the father of the decedent's two godchildren, who were the residuary beneficiaries of the estate, on a number of occasions asked the respondent to explain the delay in his settlement of the estate. The respondent replied to these inquiries, but did not take steps to promptly complete the settlement of the estate. On June 26, 1997, the father filed a request for investigation with Bar Counsel. Over the next four years, Bar Counsel communicated with the respondent on numerous occasions asking him to prepare and file probate accounts and to take steps to complete the probate of the estate. M.G.L. c. 206, § 1, requires an executor to render yearly accounts. The respondent did not file his first account until August 5, 1999, and his second and his third and final accounts until June 6, 2001. The respondent did not conclude his administration of the estate until November 28, 2001.

The respondent's neglect in filing the will violated Canon One, DR 1-102(A)(5) and (6); Canon Six, DR 6-101(A)(3); and Canon Seven, DR 7-101(A)(1)-(3). The respondent's failure to obtain prompt confirmation of his appointment as executor and to timely carry out his duties as executor, including his failure to timely file the estate tax return and pay the estate tax, his failure to timely marshal and distribute the estate assets, and his failure to deposit estate funds to a proper interest-bearing account, violated Canon Six, DR 6-101(A)(2) and (3); Canon Seven, DR 7-101(A)(1)-(3); Canon Nine, DR 9-102(A), (B)(2) and (4), and (C); and Mass. R. Prof. C. 1.1, 1.3, and 1.15(a), (b), (d), and (e). The respondent's neglect in failing to render accounts at least once a year regarding the estate as required by M.G.L. c. 206, § 1, and upon request by a beneficiary's representative and Bar Counsel, violated Canon One, DR 1-102(A)(5); Canon Six, DR 6-101(A)(3); Canon Nine, DR 9-102(B)(3); and Mass. R. Prof. C. 1.3, 1.15(b), and 8.4(d).

The respondent was admitted to practice in 1964. In aggravation, the respondent's difficulties in handling this estate occurred, in part, as a result of his undertaking to handle too many matters as a sole practitioner. In mitigation, the respondent paid all penalties and interest due as a result of his late filing of the estate tax return, and waived his executor's fee. No harm resulted to the life beneficiary of the trust due to the delay in funding the trust, as the funds were not needed for his care. The respondent's final account was allowed without objection. The respondent has taken steps to conduct his practice in a more efficient manner, including limiting the number of cases that he will take and no longer handling any estate administration matters. 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.

<sup>1</sup> Compiled by the Board of Bar Overseers based on the record of proceedings before the Board.

Please direct all questions to [webmaster@massbbo.org](mailto:webmaster@massbbo.org).

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