

KEVIN C. SULLIVAN

Order (public reprimand) entered by the Board June 27, 2005.

SUMMARY¹

The respondent was admitted to the Bar of the Commonwealth on November 28, 1969. At the time discipline was imposed, he was seventy-two years old, had practiced on only a part-time basis since 1996 and had assumed retired status.

In 1987, the respondent prepared a will for a client, then age seventy-six. The respondent had known the client and her late husband for a number of years.

In the early 1990's, the client's physical and mental condition deteriorated. She lived alone and had no close relatives, and the respondent began assisting her in managing her finances and her care.

In March of 1993, the respondent filed a petition with the probate court requesting the appointment of another lawyer in his office as conservator for the client, which was granted. The respondent acted as the attorney for the conservator and assumed responsibility for the proper maintenance of the conservatorship.

From the beginning of the conservatorship through the summer of 1995, the respondent and the conservator made arrangements for various individuals to provide the client with home care. In August of 1995, the client was admitted to a long-term care facility where she resided until her death in 2001. The respondent then made arrangements to rent the client's house through the local housing authority. In order to make the house rentable, the respondent arranged for various repairs and maintenance.

Neither the respondent nor the conservator kept adequate, detailed records documenting the expenses paid by the conservatorship. They did not require that the caregivers and building contractor submit adequately detailed invoices itemizing their work performed, services rendered and expenses incurred. They also did not maintain a detailed ledger or checkbook register itemizing all deposits to and expenditures from the conservatorship account and did not keep a full set of all bank statements and cancelled checks.

The respondent's failure to keep or assure that the conservator keep adequate records of conservatorship funds was in violation of Canon Six, Disciplinary Rules 6-101(A)(1), (2) and (3), Canon Seven, Disciplinary Rules 7-101(A)(1) and (2), and Canon Nine, Disciplinary Rule 9-102(B)(3), and, for conduct on and after January 1, 1998, Mass. R. Prof. C. 1.1, 1.2(a), 1.3 and 1.15(a).

The respondent did not file or assure that the conservator file annual accountings with the probate court, as required by G.L. c. 206, § 1. A First Account was not filed until August of 1997. A Second Account was filed in March of 2000.

The respondent's failure to file or assure that the conservator file annual accounts was in violation of Canon One, Disciplinary Rules 1-102(A)(5) and (6), Canon Six, Disciplinary Rules 6-101(A)(1), (2) and (3), and Canon Seven, Disciplinary Rules 7-101(A)(1) and (2), and, for conduct on and after January 1, 1998, Mass. R. Prof. C. 1.1, 1.2(a), 1.3, 8.4(d) and 8.4(h).

A guardian ad litem was appointed by the probate court in connection with the allowance of the First and Second Accounts of the client's conservatorship. Because the respondent and the conservator had not kept adequate records of the income and expenses of the conservatorship, the guardian ad litem concluded that the accounts were improper and should not be allowed.

The client died in April of 2001, and a Public Administrator was appointed to probate her estate. The respondent came into possession of the client's will by the end of April of 2001, but did not file it with the probate court within thirty days, as required by G.L. c. 191, § 13. In September of 2001, the respondent gave the will to the Public Administrator, who filed it with the probate court. The Public Administrator was then appointed as Administrator with the will annexed.

The respondent's failure to file the will with the probate court within thirty days was in violation of Mass. R. Prof. C. 1.1, 1.2(a), 1.3, 8.4(d) and 8.4(h).

In connection with his probate of the client's estate, the administrator reviewed the client's assets, the First and Second Accounts and the records and circumstances of the conservatorship. Although the administrator agreed with the guardian ad litem that the handling of the conservatorship funds had not been adequately documented, he concluded that there had been no misappropriation of funds.

In aggravation, the respondent's failure to assure the keeping of adequate detailed records of the conservatorship and the filing of annual accounts required investigations of the conservatorship by both the guardian ad litem and the administrator of the client's estate.

In mitigation, the respondent had very little experience with the probate courts or with conservatorships. His failure to assure the filing of annual accountings on the conservatorship and to file the client's will resulted from lack of familiarity with the applicable statutes and not from any intent to conceal or defraud.

This matter came before the Board of Bar Overseers on a stipulation of facts and rules violations and a joint recommendation that a sanction of public reprimand be imposed. On June 20, 2005, the Board voted to accept the stipulation of the parties and to administer a public reprimand to the respondent.

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