

AMY E. VALLETTA

Order (public reprimand) entered by the Board October 30, 2009.

SUMMARY¹

In 1996, the respondent was appointed as guardian of the person of John Smith (a pseudonym), and as monitor of antipsychotic medications administered to Smith. From 1996 through late 2004, Smith was confined to a state hospital, where his financial affairs were managed by hospital personnel.

During 2004, the hospital staff determined that Smith could be released to a less restrictive setting. The staff also ascertained that Smith was eligible for cash benefits as a disabled veteran (VA benefits), established his entitlement to those benefits, and received over \$100,000 in retroactive VA benefits for Smith. In addition, the hospital began receiving VA payments for Smith of about \$2,400 per month. These funds were held by the hospital. The hospital staff arranged for Smith's wife, who was also disabled, to receive an allocation of \$1,000 per month from the VA benefits.

In about December 2004, Smith was discharged from the hospital to a group home. Smith's treatment team had determined that Smith was not competent to manage his own financial affairs. As a result, in January 2005, the respondent's powers were enlarged by the probate court to include guardianship of Smith's estate.

The respondent had no experience or expertise in handling the financial affairs of a disabled veteran and failed to inform herself adequately of VA requirements for the fiduciary of a veteran. As guardian of Smith's estate, the respondent was required to notify the VA of her appointment, obtain designation as Smith's federal payee for purposes of receiving and administering his benefits, and make periodic reports to the VA concerning her administration of the benefits. The respondent failed to do so.

In or before January 2005, the respondent received about \$105,000 from the state hospital, representing Smith's accumulated VA benefits, and she arranged for Smith's monthly VA benefit checks to be sent in his name in care of her office address. The respondent then knew that she would be holding substantial funds for Smith for an indefinite period. She failed to place or maintain Smith's funds in a segregated, interest-bearing account with interest earned and paid for Smith's benefit. Until about November 2005, the respondent held Smith's funds in her IOLTA account. From about November 2005 through January 2008, the respondent held the funds in a separate fiduciary account in which the funds earned no interest.

From early 2005 through April 2006, the respondent made disbursements for Smith from his VA funds for, among other things, his living expenses at the group home and the monthly allocation for Smith's wife. On occasion, the respondent failed to issue timely payments to the group home or to Smith's wife.

The respondent moved her office in the summer of 2005 but failed to provide effective notice

of her address change to the VA. Until about the spring of 2006, Smith's VA checks were forwarded to the respondent's new office. In about April 2006, the VA suspended Smith's benefits after a check was returned by the postal service. Prior to about September 2007, the respondent failed to take adequate steps to restore the VA benefits. Due to the suspension of the benefits, the respondent failed to pay the allocation to Smith's wife during that period.

In the fall of 2007, the respondent effected the restoration of Smith's monthly VA payments and received a check from the VA for retroactive benefits during the suspension period. The VA subsequently appointed a federal payee to receive and administer Smith's VA benefits. The respondent turned over to the payee the funds she held for Smith.

From about January 2005 through January 2008, the respondent failed to reconcile her IOLTA account by comparing the account's register balance, the adjusted bank statement balance, and the total of all client matter balances, and she failed adequately to maintain required records of all funds, including Smith's funds, in the IOLTA account. Further, the respondent failed to file probate accounts as guardian of Smith's estate.

By failing to obtain a reasonable return on Smith's funds, comply with VA regulations, obtain and restore promptly all the benefits due Smith, file probate accounts, and make all disbursements for Smith on a timely basis, the respondent violated Mass. R. Prof. C. 1.1 and 1.3. By failing to hold Smith's funds in a segregated account with interest payable for Smith's benefit, the respondent violated Mass. R. Prof. C. 1.15(e)(5). By failing to reconcile her IOLTA account and maintain required account records, the respondent violated Mass. R. Prof. C. 1.15(f)(1)(B)-(E) and (F)(iii).

In aggravation, the respondent received an admonition in 2006 for failing to act diligently and seek the client's lawful objections in a divorce case. Admonition No. 06 23, 22 Mass. Att'y Disc. R. 899 (2006). In mitigation, during part of the relevant time period, the respondent had to attend to serious family illness that created stress and distracted her full attention from her law practice. The respondent took the necessary steps to administer her fiduciary funds in compliance with Mass. R. Prof. C. 1.15.

The matter came before the Board of Bar Overseers on the parties' stipulation of facts and rule violations and an agreed recommendation for discipline by public reprimand, conditioned on an audit of the respondent's law practice by the Law Office Management Assistance Program (LOMAP). On October 19, 2009, the board voted to accept the stipulation and impose the recommended discipline.

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

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