

MARY K. NEALON

Order (public reprimand) entered by the Board March 25, 2009.

SUMMARY<sup>1</sup>

The respondent received a public reprimand for her conduct in three matters.

In January of 2003, the respondent prepared a will for a client, leaving her estate to charity. At the client's request, the respondent agreed to serve as executor. The client died on March 27, 2003. At the time of her death, the client's estate consisted of a house in Framingham, Massachusetts with an assessed value of \$268,800, and approximately \$269,479 in liquid assets.

After the client's death, the respondent asked her brother and law partner to represent her in seeking appointment as executor and in settling the client's estate. On April 10, 2003, the will was presented for probate in the Middlesex Probate and Family Court. Under heirs at law, the petition stated "None". The assistant register declined to accept the documents for filing until he received assurance that there had been a diligent search for possible heirs. After April 10, 2003, the respondent did not take reasonable prompt steps to conduct a search for heirs of the decedent and otherwise failed to take steps necessary to file the petition for probate in order to secure the respondent's appointment as executor.

From April 2003 to March 2005, because no executor had been appointed, the decedent's home remained vacant, real estate taxes were not paid, the Town of Framingham recorded a tax title on the property, estate assets were not collected, and the charitable beneficiaries of the decedent's estate did not receive their bequests.

By March 2, 2005, the respondent and her brother had completed the search and determined that the decedent had no known heirs. On March 2, 2005, the respondent's brother filed a new petition for probate, and the filing was accepted. On July 5, 2005, the respondent was appointed executrix of the estate.

Between August 1, 2005, and September 15, 2005, the respondent and her brother collected \$274,259.41 from the decedent's bank accounts, and deposited the estate funds to the firm's IOLTA account. The respondent did not establish a separate, interest-bearing estate account to hold the estate funds until September 20, 2006. Between August 5, 2005, and September 20, 2006, the respondent maintained the estate funds on deposit in the firm's IOLTA account, where the funds failed to earn interest payable to the estate.

By no later than December 31, 2005, the respondent was in a position to make preliminary distributions of estate funds to the charitable beneficiaries of the estate. The respondent failed to make any preliminary distributions. She did not list the house for sale until about December of 2006. On or about April 17, 2007, the respondent sold the decedent's house and deposited the net proceeds of \$201,078.84 to the estate account.

In July of 2007, the respondent distributed \$400,000 in estate assets to four charitable beneficiaries of the estate. On or about August 31, 2007, the respondent made a final estate distribution of \$1,384.20 to a charitable beneficiary. On or about August 31, 2007, the respondent filed a first and final account with the court. On December 28, 2007, the court approved the respondent's first and final account.

By failing to conduct a prompt and diligent search for heirs of the decedent, and by failing to secure her appointment as executor until more than two years had elapsed since the decedent's death, the respondent violated Mass. R. Prof. C. 1.1 and 1.3. By depositing more than \$274,000 in estate assets to an IOLTA account, and by holding the assets in the IOLTA account, rather than in an interest-bearing account with the interest payable to the estate, for more than one year, the respondent violated Mass. R. Prof. C. 1.15(e)(5). By failing to promptly make estate distributions to the estate beneficiaries, the respondent violated Mass. R. Prof. C. 1.1, 1.3, and 1.15(c). By failing to act with reasonable diligence and promptness in selling the decedent's house and completing the settlement of the estate, the respondent violated Mass. R. Prof. C. 1.1 and 1.3.

In the second matter, in June of 2004 the respondent agreed to represent two clients, a brother and sister, in probating their mother's will and settling her estate. The clients' mother had died on June 5, 2004. On July 27, 2004, the respondent filed a petition seeking allowance of the decedent's will, and appointment of her clients as co-executors of their mother's estate. On September 23, 2004, the clients were appointed co-executors.

Between October 8, 2004, and December 8, 2004, the respondent sold real estate and collected additional estate assets. As a result of these transactions, the respondent received approximately \$620,326 in estate funds, which she deposited to her firm's IOLTA account instead of establishing a separate, interest-bearing account for the estate.

Between October 28, 2004, and February 18, 2005, the respondent made partial distributions totaling approximately \$611,500 from the estate funds in the IOLTA account to the estate beneficiaries. After these distributions, the respondent continued to hold approximately \$9,000 in estate assets in her firm's IOLTA account.

As of February 2005, the respondent needed to liquidate certain bonds owned by the decedent, prepare a first and final account for the estate, and make final distributions to the beneficiaries in order to settle the estate. Between February 2005 and May 2006, the respondent failed to take any action of substance to complete the settlement of the estate. During this same period, the respondent failed to respond to inquiries from her clients concerning the status of the estate.

In May 2006, the respondent began to take steps to liquidate the bonds. On or about July 7, 2006, the respondent received a check in the amount of \$29,469.47 from the sale of the bonds, and deposited the check to her firm's IOLTA account. Between July 7, 2006, and January 22, 2007, the respondent failed to make distributions to the estate beneficiaries. During this same period, the respondent failed to prepare a first and final account for the estate, and to respond to inquiries from her clients about the status of the matter.

On November 13, 2006, one of the co-executors filed a request for investigation with the Office of Bar Counsel. On or about January 22, 2007, the respondent made additional distributions totaling approximately \$26,745 to the estate beneficiaries from the bond proceeds and other estate funds on deposit in her IOLTA account. The respondent did not prepare a first and final account for the estate until about September 2007. In about September of 2007, the respondent sent a first and final account to the co-executors for review and execution. The co-executors signed and returned the account to the respondent by May of 2008. On June 27, 2008, the respondent filed the account with the court, and the account was allowed without objections on August 5, 2008.

By failing to act with reasonable diligence and promptness in collecting and distributing the assets of the estate, and in preparing and filing a first and final account for the co-executors, the respondent violated Mass. R. Prof. C. 1.1 and 1.3. By failing to hold the estate assets in an interest-bearing account with the interest payable to the estate, the respondent violated Mass. R. Prof. C. 1.15(e)(5). By failing to promptly make estate distributions to the estate beneficiaries, the respondent violated Mass. R. Prof. C. 1.15(c). By failing to keep her clients reasonably informed about the status of the estate matter and to promptly comply with reasonable requests for information, the respondent violated Mass. R. Prof. C. 1.4(a).

In the third matter, in August of 2001, the respondent agreed to represent a California resident who had become ill earlier that year while visiting with his sister in Massachusetts. The client expected to remain in a nursing home in Massachusetts and asked the respondent to prepare a will, an irrevocable trust, a power of attorney, and a health care proxy. The respondent prepared the instruments, which the client executed in August of 2001.

In 2001 and 2002, the respondent also assisted the client in collecting and transferring a number of his assets to an irrevocable trust, of which his two nephews were named as trustees. The trust funds were held in a trust account under the control of the trustees.

In the fall of 2002, the client recovered his health and moved back to California. The respondent retained, with the permission of her client's attorney-in-fact, approximately \$12,700 of the client's funds to be used to pay bills for the client. The respondent did not deposit these funds to an interest-bearing account with the interest payable to her client but retained these funds in her IOLTA account. In the spring of 2006, the respondent paid a nursing home bill for the client in the amount of \$6,777.60, as authorized by her client's attorney-in-fact.

In September of 2006, the client notified the respondent that the representation was terminated, and he requested that his file be sent to his new counsel in California. The respondent failed to promptly return the client's file. She also failed to promptly disburse the remaining funds that the respondent held for the client and retained those funds in the IOLTA account.

On March 5, 2007, the successor counsel filed a request for investigation with the Office of Bar Counsel. On or about April 27, 2007, the respondent delivered the client's file to his successor counsel, together with a check for \$6,549.05.

By failing to promptly surrender papers and property to which the client was entitled upon termination of her representation, and to promptly make available to a former client his file within a reasonable time following the client's request, the respondent violated Mass. R. Prof. C. 1.15(c) and 1.16(d) and (e). By failing to hold client funds in an interest-bearing account, the respondent violated Mass. R. Prof. C. 1.15(e)(5).

The respondent was admitted to practice in Massachusetts on December 17, 1991, and had received no prior discipline. In mitigation, the estates in the first two matters were ultimately resolved to the satisfaction of the beneficiaries. In the third matter, the respondent paid interest on the client's funds that should have accrued had the funds been held in an interest-bearing account, and she waived her fee.

The matter came before the Board of Bar Overseers on a stipulation of facts and a joint recommendation for discipline. The board accepted the parties' recommendation, and on March 9, 2009, the board ordered a public reprimand, subject to conditions that the respondent (1) attend a CLE course designated by bar counsel concerning professional responsibility and the practice of law, and (2) within ten days of the entry of the public reprimand, contact the Director of the Law Office Management Assistance Program (LOMAP), and make arrangements for LOMAP to inspect and audit the respondent's law office practices within six months from the date of the reprimand.

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

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