

MARIE B. McGUIRK

Order (public reprimand) entered by the Board July 27, 2010.

SUMMARY¹

In April of 2005, the respondent was named temporary guardian of a mentally ill person by the Worcester Probate and Family Court. In January of 2006, the respondent was appointed the ward's permanent guardian. As temporary and permanent guardian, the respondent was required to file an inventory as well as yearly accounts per G. L. c. 205, § 1 (6) and G. L. c. 206, § 1. The respondent failed to file an inventory and to render accounts regarding the guardianship estate for the years 2005 through 2007.

On March 13, 2007, the ward died intestate leaving three children. Upon the ward's death, the respondent's appointment as guardian ended and the respondent was required to file an inventory and a final accounting with the probate court, but the respondent failed to do so. By letter dated June 6, 2007, one of the children, a daughter, through counsel, requested that the respondent immediately file her inventory and accounting and furnish a copy. The respondent failed to do so despite numerous additional requests made by counsel.

On August 16, 2007, the daughter's counsel filed a petition and order to render inventory-account with the court. The court issued an order of notice ordering the respondent to file her inventory and account on or before December 18, 2007. On or about December 6, 2007, the respondent filed a first and final account, but it was returned to the respondent by the court for failure to file the correct filing fee. On January 29, 2008, the respondent re-filed and a citation was issued. The respondent failed to properly serve the children with the citation as required by law.

On February 28, 2008, the daughter filed an objection to the account. On April 11, 2008, a second order of notice of guardian's account was issued by the court and mailed to the respondent. The respondent again failed to properly serve the daughter with the order of notice as required by law.

Between February and May 2008, the daughter's counsel repeatedly requested information about certain disbursements and sought supporting documentation. The respondent failed to comply with the request until September of 2008, when she produced the requested bank records and documentation to the daughter's counsel. On or about October 8, 2008, an assented withdrawal of the objection to the first and final account was filed with the court, and the account was approved.

The respondent's failure to file inventories and annual accounts, failure to timely file a final account upon request after the ward's death, and failure to serve the orders of notice violated Mass. R. Prof. C. 1.1, 1.3, 1.15(d) (1) and 8.4(d) and (h).

In a second case, the respondent was retained on a flat fee basis by the mother of a mentally ill young man to represent him in his commitment hearing at Bridgewater State Hospital and

in his criminal case resulting from an arrest for assault and battery with a dangerous weapon on a hospital worker in June 2008. The respondent also agreed to represent the mother in obtaining co-guardianship of her son. The mother was distraught over the son's declining mental health because he was refusing to take medication, and she wanted to pursue the guardianship expeditiously.

The respondent failed to appreciate the potential for a conflict of interest in representing the son in the commitment matter and the mother in the guardianship matter. The respondent failed to advise the mother and the son of the potential for a conflict of interest and therefore did not receive their consent after consultation to waive the conflict.

On August 27, 2008, after a commitment hearing, the son was found not competent and committed to Bridgewater State Hospital. After the hearing, the respondent informed the mother that she was working on the petition for guardianship and that she would contact her the following week. For approximately two weeks after the hearing, the mother repeatedly tried to contact the respondent regarding the status of the guardianship petition, leaving several phone messages. The respondent failed to return many of the mother's the calls in a timely manner.

In September 2008, the son was transported to the Worcester District Court for a hearing on the criminal charges. The respondent failed to appear for that criminal hearing on the son's behalf. The mother repeatedly attempted to contact the respondent to find out why the respondent had failed to appear at the criminal hearing and to find out the status of the guardianship. When the mother succeeded in contacting the respondent, she stated she had been unaware of the criminal hearing and that the guardianship would be completed the following week.

In September 2008, the respondent realized for the first time that she had a conflict of interest. The respondent informed the mother that she could not handle the guardianship petition because she had a conflict of interest due to her representation of the son at the commitment hearing.

Thereafter, the mother terminated her relationship with the respondent and informed the respondent that she had hired new counsel to represent her son in the criminal matter, and different counsel to file the guardianship petition. On September 21, 2008, the mother contacted the respondent and requested that she transfer her son's criminal case file to successor counsel, but the respondent failed to do so in a timely manner. Successor counsel also contacted the respondent and requested that she transfer the son's criminal case file to him, but the respondent failed to do so in a timely manner.

In October of 2008, the respondent filed her withdrawal of appearance in the son's civil commitment and delivered the case files to successor counsel.

The respondent's conduct in failing to appear for the hearing on the client's criminal matter in Worcester District Court violated Mass. R. Prof. C. 1.3. The respondent's failure to keep the mother reasonably informed about the guardianship case and to explain the matter to the extent reasonably necessary to permit the client to make an informed decision regarding the representation violated Mass. R. Prof. C. 1.4(a) and (b). The respondent's conduct in neglecting the guardianship case, resulting in the delay in the mother's obtaining guardianship for her son, violated Mass. R. Prof. C. 1.3. The respondent's failure to make available the client's files upon her request violated Mass. R. Prof. C. 1.16(d) and (e). The respondent's agreement to represent the son in the commitment and criminal proceedings and the mother in the guardianship proceeding without obtaining the consent after consultation of the son or the mother violated Mass. R. Prof. C. 1.7(a) and (b).

In mitigation, during the relevant time period, the respondent was undergoing serious health problems that required surgery and hospitalization. These mitigating factors contributed to

the delay and lack of attention to the cases in the petition for discipline. The respondent also returned her full fee to the decedent's estate in the first matter and an amount satisfactory to the client in the second matter. The respondent fully cooperated with bar counsel during the investigation, and the respondent expressed regret about her handling of these matters.

These matters came before the Board of Bar Overseers on a stipulation of facts and rule violations and a joint recommendation for a public reprimand. On July 12, 2010, the Board voted to administer a public reprimand.

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

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