IN RE: MARIE B. McGUIRK

NO. BD-2013-007

S.J.C. Order of Term Suspension entered by Justice Duffly on February 4, 2013, with an effective date of March 7, 2013.[1]

SUMMARY[2]

In July of 2003, the respondent was appointed as guardian of a mentally ill person by the Worcester Probate and Family Court. As guardian, the respondent was required to file an inventory as well as yearly accounts with the probate court. The respondent failed to file an inventory and to render accounts regarding the guardianship estate for the years 2003 through 2010.

In August 5, 2003, the ward was admitted to Beaumont Rehabilitation and Skilled Nursing Center (Beaumont). Between 2003 and 2010, the respondent neglected to attend the ward's quarterly patient care meetings at Beaumont. The respondent also repeatedly neglected to comply with annual Medicaid eligibility requirements and to provide MassHealth with financial updates in order to maintain the ward's MassHealth benefits. This resulted in temporary denials of the ward's benefits.

In June 2007, counsel for Beaumont filed a Petition and Order to Render Account with the Worcester Probate and Family Court alleging that the respondent had neglected to file an account of her administration of the ward's estate. On July 5, 2007, the Probate Court ordered the respondent to file an account of her administration of the ward's estate on or before October 5, 2007. On September 6, 2007, the respondent received service of the order, but failed to file the required accounts.

At various times from 2008 through 2010, the respondent neglected to pay Beaumont for the ward's care. In April 2010, counsel for Beaumont filed a Request for Counsel for the ward with the Worcester Family and Probate Court, seeking to remove the

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[1] The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

[2] Compiled by the Board of Bar Overseers based on the record filed with the Supreme Judicial Court.

respondent as guardian. The court appointed counsel to serve as special guardian for the ward on July 13, 2010.

In February 2011, the Worcester Family and Probate Court issued a Contempt Summons to the respondent as a result of her failure to file an account for the ward's estate according to its July 5, 2007 order. A hearing was scheduled for March 28, 2011. The respondent accepted service of the summons on March 22, 2011, but failed to attend the hearing. On March 21, 2011, the respondent attempted to file an account for the ward's estate with the probate court. However, the respondent failed to pay the correct filing fee, and the register's office returned the account to her.

On April 6, 2011, the Worcester Family and Probate Court found the respondent in contempt for failing to file an accounting for the ward's estate. The court sentenced the respondent to thirty days in jail but allowed her to purge herself of the contempt by filing the accounting by April 15, 2011. The respondent did not timely comply with the court's order.

On May 2, 2011, the court issued a *Sua Sponte* Supplemental Judgment of Contempt finding that the respondent did file an accounting on March 25, 2011; however, the accounting was returned for failure to pay the appropriate filing fee. The court ordered the respondent to file the accounting with the proper fee by May 23, 2011. The respondent complied with the court order and filed an accounting with the proper fee.

On September 27, 2011, the ward died. 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. The respondent failed to timely file a final accounting. On June 18, 2012, the respondent filed an accounting with the court.

The respondent's conduct in failing to file inventories and annual accounts as required by statute and court orders, failing to attend the ward's quarterly care meetings at Beaumont, failing to comply with annual Medicaid eligibility requirements and to provide MassHealth with financial updates, and failing to file a timely final account upon the ward's death violated Mass. R. Prof. C. 1.1, 1.3, 1.15(d) (1), 3.4(c) and 8.4(d) and (h).

In a second case, the respondent was appointed by the Worcester Family and Probate Court as temporary guardian for another ward in April 2005. On September 27, 2005, the court issued a Permanent Decree of Guardianship naming the respondent as

guardian for the ward. As guardian, the respondent was required to file an inventory and yearly accounts with the probate court. The respondent failed to file accounts in a timely fashion regarding the guardianship estate for the years 2005 through 2010.

In April 2005, the ward was admitted to Beaumont. Between 2005 and 2010, the respondent neglected to attend the ward's quarterly patient care meetings at Beaumont.

From April through September of 2005, the respondent failed to pay Beaumont's monthly bills for the ward's care. In October 2005, counsel for Beaumont served the respondent with a verified complaint filed in Worcester Superior Court. The complaint alleged that the respondent, as the ward's guardian, had failed to pay the nursing home for services rendered on behalf of the ward in the amount of $51,085.17. In November 2005, an attachment was issued on the ward's real estate for $50,000 on behalf of Beaumont. Counsel informed the respondent that a motion to dismiss the complaint would be filed upon receipt of the outstanding funds. The respondent paid Beaumont with proceeds from the sale of the ward's real estate, and the attachment was discharged. The complaint was dismissed in April 2006.

From April through September, 2006 the respondent failed to pay Beaumont's monthly bills, in the amount of $35,928.46, for the ward's care. In June 2007, counsel for Beaumont informed the respondent that the ward's account was once again being referred for collection. In the June letter, counsel for Beaumont also requested the respondent attend upcoming patient care meetings on behalf of the ward. The respondent failed to do so.

From January to November, 2010, the respondent failed to forward the ward's social security and pension payments to Beaumont. On July 20, 2010, counsel for Beaumont filed a Petition and Order to Render Account. On November 4, 2011, a Petition and Order to Render Account was allowed by the Worcester Family and Probate Court, which ordered the respondent to file an account for the ward's estate by January 24, 2012. The respondent accepted service on November 16, 2011. The respondent failed to timely file an account as ordered.

On November 22, 2010, the ward died. Upon the ward's death, the respondent's appointment as guardian ended and the respondent was required to file a final accounting with the probate court. The respondent failed to timely file a final accounting.

In February 2011, counsel for the Beaumont filed a petition and order to render account. In February 2012, the respondent filed the final accounting. The citation issued and was served.

The respondent's conduct in failing to file annual accounts, failing to comply with Medicaid eligibility requirements and to provide MassHealth with financial updates, failing to timely file an account upon and to publish the citation, violated Mass. R. Prof. C. 1.1, 1.3, 1.15(d) (1) and 8.4(d) and (h).

In mitigation, during the relevant time period, the respondent was undergoing serious health problems that required surgery and hospitalization as well as her husband's illness and her mother's death. These mitigating factors contributed to the delay and lack of attention to the cases in the petition for discipline. The respondent fully cooperated with bar counsel during the investigation, and the respondent expressed regret about her handling of these matters.

In aggravation, in July 2010, the respondent received a public reprimand for similar misconduct. *Matter of McGuirk*, 26 Mass. Att'y Disc. R. 355 (2010).

These matters came before the Board of Bar Overseers on a stipulation of facts and rule violations and a joint recommendation for a suspension for one year and one day. On January 14, 2013, the board voted to accept the stipulation of the parties and their joint recommendation to file an Information with the Supreme Judicial Court. On February 4, 2013, the Court entered an order suspending the respondent from the practice of law for one year and one day.