Public Reprimand No. 2011-5

Order (public reprimand) entered by the Board on March 28, 2011.

SUMMARY[1]

A brother and sister hired the respondent in the fall of 2000 to handle the estate of their mother, who had died a few months earlier. The probate estate consisted of about $175,000 in bank deposits and a car. By her will and two codicils, the decedent left all her property to her grandchildren and nominated an attorney and a bank as executors. A third codicil executed by the decedent deleted those nominations without substituting others.

The clients gave the respondent the will and the three codicils and told her that they wanted to be appointed as administrators. They retained custody of the decedent's bank books and the car. The respondent did not inquire whether the bank accounts were joint or in the decedent's name only. She did not advise the clients that the funds had to be held for the legatees under the will unless the decedent had designated and intended the accounts as joint accounts and that distribution of the decedent's assets had to be approved by the probate court.

Prior to the spring of 2002, the respondent failed to deliver the will and codicils to the probate court as required by G.L. c. 191, § 13, or take action of substance for the clients. In June 2002, the respondent filed a petition for administration of the decedent's estate with will annexed, the will, the first two codicils and administrators' bonds. The petition sought the clients' appointment on the basis that the nominated executors were unable to serve. The respondent did not realize that she had received a third codicil eliminating the nomination of executors and did not file it.

The respondent subsequently obtained and filed a declination by the attorney who had been nominated originally as executor. By then, the nominated bank had been taken over by or merged with a series of other banks. Failing to realize that no declination was necessary under the third codicil, the respondent made unsuccessful efforts to determine which bank had authority to execute a declination.

In 2005, the clients, absent legal right or authority and without the respondent's prior knowledge, withdrew nearly $141,000 from the decedent's accounts. The clients delivered those funds to the respondent, telling her that that the decedent had expressed a wish to set up a trust for the education of their grandchildren, the decedent's great-grandchildren, and that she could also pay her fees and expenses from the funds. The respondent erroneously assumed that the funds came from non-probate assets and agreed to the clients' instructions. In the summer of 2005, the clients, as donors and trustees, executed a trust declaration drafted by the respondent for the great-grandchildren's trust.

The respondent had deposited the funds to her IOLTA account. During 2005 and 2006, she made disbursements to one of the great-grandchildren for education expenses and to herself for her fees and expenses related to the estate and the trust. The respondent did not

[1] Complied by the Board of Bar Overseers based on the record of proceedings before the Board.

transfer the remaining funds of about $130,000 to a separate trust account and instead retained them in the IOLTA account.

In and after 2005, one of the grandchildren made inquiries to the respondent about the status of the estate. Relying on her mistaken assumption that most of the bank deposits were jointly owned, the respondent replied incorrectly that there were only limited estate assets, there would be virtually no funds left for the legatees after reimbursing the clients for estate debts, and the clients had used non-probate assets to establish the trust for the great-grandchildren.

In 2006, the same grandchild petitioned for his own appointment as administrator. The parties subsequently agreed to the appointment of an independent administrator, who determined that the funds received by the respondent from the clients were drawn from solely-owned accounts and thus were estate assets due the grandchildren as legatees under the will. Immediately upon the administrator's request, the respondent turned over the remaining funds in her possession. One of the clients later repaid the estate for interest that should have been earned on the decedent's funds and for unrelated expenses including the respondent's fees for the trust. The grandchildren received their net legacies, after deductions for the administrator's fees and expenses, in early 2008.

The respondent's failure timely to deliver the will and codicils to the probate court violated Mass. R. Prof. C. 1.3 and 8.4(d). The respondent's failure to act with reasonable diligence and competence violated Mass. R. Prof. C. 1.1 and 1.3, and her failure to advise her clients on their responsibility to maintain intact the estate property in their possession violated Mass. R. Prof. C. 1.4(a) and (b). The respondent's failure to hold the funds received from the clients in a separate, interest-bearing trust account violated Mass. R. Prof. C. 1.15(e)(5).

In aggravation, the respondent had substantial experience in handling estates. Her misconduct resulted in extended delay in the distributions to the legatees and additional fees charged to the estate by the independent administrator. In mitigation, the respondent had severe and protracted marital problems for most of the time in question, and she also had to cope with increased professional burdens resulting from the retirement of her longtime senior partner. In addition, the estate was reimbursed for lost interest and most of the respondent's fees.

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. On March 14, 2011, the board voted to accept the stipulation and impose a public reprimand.