Richard C. Bishop

Public Reprimand No. 11-3

Summary[1]

In 2001, the respondent created an estate plan for a married couple. The couple had three daughters, one of whom suffered from a disabling mental illness. Among other things, the couple conveyed their home, their only valuable asset, to two of their daughters but reserved a life estate for themselves and for the disabled daughter. The respondent understood that his clients wanted to ensure that the disabled daughter would have the right to stay in the home after their deaths.

The wife died on August 18, 2006. By this time, her husband had conveyed his life estate interest in the home to her. The two daughters therefore owned the home subject to the disabled daughter's life estate.

The death of her mother so affected the disabled daughter that she voluntarily admitted herself to a psychiatric unit at a local hospital. On August 20, 2006, one of the daughters retained the respondent to represent her in obtaining a release of the disabled sister's life estate and to prepare a power of attorney and a health care proxy naming the daughter as her disabled sister's agent and proxy. The respondent failed to appreciate that representation of the daughter would be materially adverse to his representation of her parents and adverse to his ongoing obligations to the husband.

The respondent advised the daughter to have a guardian appointed for her hospitalized sister, but the respondent was then informed that the doctors would not sign the requisite medical certificate. Shortly after the sister was hospitalized, the respondent and his client met with her in her hospital room. During their meeting, the respondent told the disabled sister that he did not represent her and was representing the other daughter. The respondent had the disabled sister sign a release of her life estate for nominal consideration and a health care proxy and power of attorney after explaining each document to the disabled sister.

The husband died in October 2006. On March 29, 2007, the two daughters sold the property and divided the net proceeds of $170,624.72 between them. The respondent represented the daughters in the sale.

By May 2008, the probate court had appointed a guardian for the disabled sister's person and estate. The guardian demanded that the two daughters turn

---

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

over to the ward her share of the proceeds from the sale of the property. After the sisters refused, the guardian sued them and the respondent in superior court alleging undue influence and deceit by each defendant and legal malpractice by the respondent. On April 21, 2010, a settlement was filed with the court providing for a total payment of $150,000.00 to the ward. The respondent's malpractice carrier contributed to the settlement.

The respondent conduct in representing the daughter in a matter directly adverse to his former clients' interests and when the representation was materially limited by the respondent's responsibilities to another client violated Mass. R. Prof. C. 1.7(a) and (b) and 1.16(a)(1). The respondent conduct in representing the daughter when her interests were adverse to the interests of the respondent's former clients in the same or a substantially related matter violated Mass. R. Prof. C. 1.9(a) and 1.16(a)(1)

In mitigation, there was no evidence of self-dealing, the respondent had no personal interest in the proceedings, and the disabled daughter suffered no permanent financial harm. In aggravation, after a guardian was appointed, the guardian was forced to bring suit in order to obtain the ward's share of the proceeds from the sale of the family property.

The matter came before the Board of Bar Overseers on a stipulation of facts and a joint recommendation that the respondent receive a public reprimand. The Board of Bar Overseers accepted the parties' recommendation and imposed a public reprimand on February 14, 2011.