SHEILA M. TIERNEY

Public Reprimand No. 2012-15

Order (public reprimand) entered by the Board on July 25, 2012.

SUMMARY[1]

On July 16, 1964, a man executed a will leaving his entire estate to his wife, and nominating his wife to serve as his executrix (1964 will). On April 12, 1972, the man and his wife were divorced. After the divorce, the man did not execute a new will. On July 15, 1999, the man (the decedent) died. Pursuant to M.G.L. c. 191, § 9, as in effect at the time of the decedent's death, wills made prior to a divorce were revoked as to dispositions made to the former spouse. The decedent's heirs at law included the descendants of five deceased cousins.

The former wife hired the respondent to probate the will and have the ex-wife appointed as executrix, but the Probate Court dismissed the petition in December 1999. The ex-wife and her sister thereafter sought the respondent's appointment as administratrix with the will annexed, and the respondent was so appointed in September 2000.

At the time of his death, the decedent's probate estate consisted of two bank accounts totaling approximately $171,000, and real estate valued at approximately $95,000. Between September 2000 and May 2001, the respondent marshaled the estate assets, opened estate accounts, filed an inventory with the Probate Court, filed an affidavit attesting that the decedent's gross estate did not necessitate a federal estate tax filing, and sold the real estate and deposited the net proceeds totaling $97,598.48 to an estate account.

In about September 2001, the ex-wife hired new counsel to represent her in connection with the settlement of the decedent's estate. At that lawyer's request, the respondent requested instructions on whether the 1972 divorce had revoked the decedent's 1964 will because the divorce had occurred before M.G.L. c. 191, § 9, became effective. In December 2002, the Probate Court decreed that the statute applied and that the respondent as administratrix was to distribute the estate to the decedent's heirs-at-law in accordance with M.G. L. c. 191, § 9.

As of December 2002, the respondent had not identified and located all of the decedent's heirs-at-law. Between 2003 and 2011, despite multiple requests from some of the heirs to distribute the estate assets, the respondent failed to conduct a reasonably diligent search to locate all of the heirs and otherwise failed to take steps necessary to distribute the estate assets and complete the settlement of the estate. During this period, the respondent kept the estate funds in an interest-bearing estate account but delayed their distribution. Some of the heirs died without receiving their shares of the estate, and the estate also incurred additional surety bond premiums and accounting fees for preparing fiduciary income tax returns. In addition, the respondent filed the fiduciary income tax returns for the

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

estate for tax years 2002 and 2009 late and paid the taxes late, resulting in late penalty and interest charges against the estate in the total amount of $133.10.

After receiving additional inquiries from some of the heirs, in May 2011 the respondent made the first partial distributions totaling approximately $151,000 to eleven descendants of three of the decedent's cousins. The respondent did not make distributions to the descendants of the remaining two cousins because she had not yet identified and located all of their descendants.

On about June 22, 2011, one of the descendants filed a request for investigation with bar counsel concerning the respondent's handling of the estate. After being contacted by bar counsel, in about September 2011, the respondent engaged a professional heir-finder and located all the descendants by November.

In November 2011, the respondent distributed approximately $95,000 to the remaining ten descendants. On November 28, 2011, the respondent filed a first and final account with the Probate Court, which the court approved on December 13, 2011.

The respondent charged and collected a fee of $22,500 for her work on the estate. The respondent's fee was clearly excessive given the relatively small size of the estate, and the delay in settling the estate and the resulting harm caused to the estate and beneficiaries.

By failing to conduct a prompt and diligent search for heirs of the decedent, the respondent violated Mass. R. Prof. C. 1.1 and 1.3. By failing to promptly make estate distributions to the estate beneficiaries, and by delaying the settlement of the estate for over eight years, the respondent violated Mass. R. Prof. C. 1.1, 1.3, 1.15(c), and 8.4(d). By failing to act with reasonable diligence and promptness in filing fiduciary income tax returns and paying the income tax due in 2003 and 2010, the respondent violated Mass. R. Prof. C. 1.1 and 1.3. By charging and collecting a clearly excessive legal fee, the respondent violated Mass. R. Prof. C. 1.5(a).

The respondent was admitted to practice in 1985, and had no prior discipline. In mitigation, on May 31, 2012, the respondent made restitution to the estate for a portion of her fee and reimbursed the estate for the expenses it incurred due to the delay.

The matter came before the Board of Bar Overseers on a stipulation of facts and a joint recommendation for a public reprimand. The board accepted the parties' recommendation, and on July 9, 2012, the board ordered a public reprimand.