JOHN ANTHONY GIANINO

Public Reprimand No. 2012-9

Order (public reprimand) entered by the Board on May 24, 2012.

SUMMARY[1]

In 2007, the respondent prepared estate planning documents for a client including, among others, a durable power of attorney and an irrevocable trust. The client's daughter was named attorney in fact and trustee of the trust. Two years later the mother entered a nursing home.

By February 2010, the mother owed over $28,000 for nursing home charges and had other unpaid bills. The mother then had about $22,000 in a bank account in her name and about $35,000 in an account in the name of the daughter as trustee. Bank deposits over $2,000 rendered the mother ineligible for Medicaid.

In February 2010, the daughter consulted the respondent for help in obtaining Medicaid coverage for the mother, paid him a flat fee of $4,500, and signed a fee agreement for the representation. The fee agreement provided that the respondent had been retained to prepare a "Medicaid Plan" and to prepare and submit a Medicaid application, among other services. The agreement also provided, in part, that "the legal work is substantially performed early in the representation and is fully completed upon the delivery of the Medicaid Plan" to the client.

One day after the engagement, the respondent sent the daughter a letter with a "Medicaid Plan." The "Plan" consisted of a summary of the mother's assets and income and a form list of records to be obtained by the daughter for the Medicaid application. In the letter, the respondent advised the daughter, among other things, that the funds held in trust should be transferred back to the mother's bank account; that the daughter should call him before paying any outstanding bills; and that, after paying the bills, any remaining funds likely would be placed in a Medicaid-qualifying annuity. The preparation of the "Plan" and the letter to the daughter required no substantial expenditure of time by the respondent.

The mother died less than two weeks after the respondent's letter, and the respondent did no other work of substance in the matter. In the circumstances, the $4,500 fee paid by the daughter was substantially unearned and clearly excessive.

Between about February and May 2010, the daughter left telephone messages asking the respondent to call her to discuss a fee refund. The respondent received these requests but failed to reply. By letters sent between May and August 2010, the daughter asked the respondent for a breakdown of his time spent and a refund of the unearned portion of his fees. The respondent received the letters but failed to respond until October 2010, when he sent the daughter a partial refund of $812.50 and an accounting. The accounting included inaccurate estimates of time spent on the matter.

By collecting a clearly excessive fee, the respondent violated Mass. R. Prof C. 1.5(a), as in effect through March 14, 2011. By failing promptly to refund the unearned portion of the fee paid by the daughter, the respondent violated Mass. R. Prof. C. 1.16(d). By failing to provide

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

an accurate accounting of the fee to the daughter, the respondent violated Mass. R. Prof C. 1.15(d)(1). By failing promptly to reply to the daughter's inquiries, the respondent violated Mass. R. Prof C. 1.4(a).

In mitigation, the respondent subsequently refunded the entire balance of the fee paid by the daughter.

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 May 14, 2012, the board voted to accept the stipulation and impose a public reprimand without further proceedings.