

**LEONARD A. ESKENAS****Public Reprimand No. 2014-1**

Order (public reprimand) entered by the Board March 21, 2014.

**SUMMARY<sup>1</sup>**

An elderly client hired the respondent to represent her in a divorce action filed by her husband, who was also elderly. The couple had various marital assets including a home, where the client continued to live after the husband moved into a nursing home. The client informed the respondent that she did not want to divorce her husband and wanted to continue to live in the couple's home. Both parties were represented by counsel.

During the divorce proceedings, the client became incapable of making adequately considered decisions about her medical care, finances and the divorce. Doctors diagnosed the client as suffering from Alzheimer's Dementia, among other impairments, and recommended that the client not live alone. The client had a sister who was willing to become responsible for her sister's affairs including the resolution of her divorce, and agreed to serve as the client's guardian.

The respondent prepared petitions for a general guardianship and a temporary guardianship of the client. In both petitions, the respondent nominated the client's sister to serve as the client's guardian. The respondent presented both petitions to the court. The court appointed another lawyer to act as a *guardian ad litem* to represent the client's interest in the petition for the general guardianship and issued a citation with an order of service. The court did not docket or act upon the petition for temporary guardianship. The respondent failed to serve the client with the petitions.

The respondent failed to review the papers he received from the court to determine whether the temporary guardianship had been granted, and incorrectly assumed that it had. The respondent mistakenly believed that the client's sister had been appointed as the client's temporary guardian. He negligently misrepresented to opposing counsel and the court that the sister had authority to act on behalf of the client in the divorce.

The parties entered into a separation agreement that provided, among other things, for the sale of the couple's marital home with the proceeds to be divided in favor of the wife. The respondent did not inform the *guardian ad litem* of the agreement. The sister executed the agreement on behalf of the client as the client's temporary guardian. The court accepted the parties' agreement and entered it as an order in the judgment of divorce.

Subsequent to the entry of the court's judgment, a clerk discovered that the sister was in fact not the client's temporary guardian. The court vacated the judgment. While the divorce was again pending, the client regained her faculties, and was able to make decisions in her divorce. The parties

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<sup>1</sup> Compiled by the Board of Bar overseers based on the record of proceedings before the board.

entered into a new separation agreement that provided, among other things, for the client to buy the husband's share of the marital home with other marital assets. The court accepted the parties' agreement and entered it as an order in its judgment of divorce. The client was able to return to her home.

By failing to serve the client with the petitions for guardianship and to inform the *guardian ad litem* of the separation agreement, the respondent violated Mass. R. Prof. 1.2(a), 1.4(a) and (b), 1.14(a) and (b) and 8.4(d).

By failing to review the papers he received from the court to determine whether his petition for temporary guardianship had been granted and by negligently misrepresenting to the court and opposing counsel that the sister was the client's temporary guardian, the respondent violated Mass. R. Prof. C. 1.1 and 1.3.

In aggravation, the respondent had only been retained to represent the client in the divorce. By pursuing a general guardianship rather than a guardianship pursuant to M.G.L. c. 208, §15, which would have been limited to the divorce, his conduct had the potential to cause serious harm to his client.

In mitigation, the respondent believed, based on the medical evaluations, that his client was unable to make adequately considered decisions and attempted, in good faith, to proceed in the best interests of the client.

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 February 24, 2014, the Board voted to accept the parties' stipulation and to impose a public reprimand.