

IN RE: JAMES F. REYNOLDS, Jr.

ORDER OF PUBLIC REPRIMAND

This matter came before the Board on a Petition for Discipline and a Stipulation of the Parties waiving hearing and requesting that the matter be resolved by the imposition of a public reprimand. On July 12, 1999, the Board voted to accept the stipulation of the parties and their joint recommendation to administer a public reprimand to Mr. Reynolds without further proceedings before a hearing Committee. A summary of the charges giving rise to the reprimand is attached to this order.

Whereupon, pursuant to Supreme Judicial Court Rule 4:01, Sect. 8(2), and the Rules of the Board of Bar Overseers, Sect. 3.57, it is ORDERED AND ADJUDGED that JAMES F. REYNOLDS, Esq. be and hereby is PUBLICLY REPRIMANDED.

By: Cynthia J. Cohen

Board of Bar Overseers

Administered: August 24, 1999

SUMMARY¹

In 1981, an elderly woman named Laura Jacobs executed a will which, among other terms, left her real property and its contents, to her niece by marriage. The respondent did not know Ms. Jacobs at that time and was not involved in the drafting or execution of this will. Ms. Jacobs and her niece were in frequent contact and maintained a close relationship. In the mid 1980's, Ms. Jacobs' health began to decline. On December 2, 1987, Ms. Jacobs executed a power of attorney running to her niece. In 1989, at Ms. Jacobs's request due to her failing health, the niece began to exercise her power of attorney including writing checks on Ms. Jacobs' behalf and otherwise overseeing her expenses and finances.

In April of 1989, Ms. Jacobs hired Elizabeth Deane to provide personal assistance services to Ms. Jacobs in her home on a part-time basis. Ms. Deane quickly took on increasingly more responsibilities for the needed care of Ms. Jacobs, and by November 12, 1989, Ms. Deane, her husband Paul, and their four children had moved in with Ms. Jacobs. The niece and Ms. Jacobs' brother (her only blood relative) were aware of and approved the live-in arrangement.

In September 1989, the Deanes began discussing the terms of a live-in care agreement with Ms. Jacobs. Mr. Deane wrote a draft of an agreement and contacted the respondent. He informed the respondent that Ms. Jacobs wanted a live-in agreement and asked the respondent to put the document into legal form. The respondent had no prior relationship with the Deanes or Ms. Jacob.

In October 1989, the respondent met with Ms. Jacobs and Ms. Deane in Ms. Jacobs' home to discuss the terms of the agreement that the respondent had drawn. Sometime after that

meeting, the respondent prepared a live-in agreement which was executed by Ms. Jacobs and the Deanes on or about November 7, 1989. In exchange for the right to live at Ms. Jacobs' home in Norwell, the agreement obligated the Deanes to provide care to Ms. Jacobs twenty-four hours a day, seven days a week, and to pay one-half the cost of utilities and the full cost of telephone service. The agreement was revocable upon ninety (90) days notice. The respondent billed the Deanes \$200.00 for the preparation of the agreement, and Mr. Deane paid the respondent's bill with a personal check. The respondent did not advise Ms. Jacobs of the payment of the \$200.00 invoice.

On January 4, 1990, at the request of Mr. Deane, the respondent met with Ms. Jacobs in her home to discuss changes to her estate plan. Mr. Deane had told the respondent that he was relaying the request of Ms. Jacobs for the meeting and gave the respondent notes of changes that Mr. Deane said that Ms. Jacobs wanted made to her existing will. At the meeting, the respondent confirmed with Ms. Jacobs that she wanted the changes made to the disposition of her estate. After meeting with Ms. Jacobs, the respondent telephoned a neurologist who had been treating Ms. Jacobs with prescription medications for some time. As a result of this conversation, the respondent determined that Ms. Jacobs had testamentary capacity.

The respondent thereafter drafted a will, a revocable trust and a deed conveying Ms. Jacobs' real property to the trust, as well as a springing power of attorney. Under the springing power of attorney, Ms. Deane would become Ms. Jacobs' attorney-in-fact upon the disability of Ms. Jacobs. The respondent also drafted a revocation of the 1987 power of attorney to the niece. The estate planning documents were executed on or about January 16, 1990. Ms. Deane was named sole trustee of the trust. The successor trustees, in order of succession, were Mr. Deane and the respondent. The dispositive provisions of the trust were contained in a "First Amendment" to the trust which was executed on January 19, 1990. Under those provisions, the Deanes as remaindermen beneficiaries of the trust were to take substantially all of Ms. Jacobs' real and personal property upon her death. During the lifetime of Ms. Jacobs, Ms. Deane as trustee had management and control over all of Ms. Jacobs' property including tangible personal property and bank accounts. On March 13, 1990, the respondent recorded at the Registry of Deeds the trust and the deed conveying the real estate into the trust.

Although the respondent subjectively believed that Ms. Jacobs had testamentary capacity and that Ms. Jacobs' brother approved of the Deanes' role, the respondent knew prior to the execution of the estate planning documents described above that Ms. Jacobs was elderly, in frail health and completely dependent on the Deanes for live-in care. The respondent also knew that the estate planning documents were being proposed within a short period of time after the live-in agreement was implemented and he knew that Ms. Jacobs' real estate was in fact very valuable, with an appraised value as of 1989 of \$1.25 million. The respondent also knew that the proposed estate planning documents represented a fundamental change in Ms. Jacobs' estate plan to the detriment her niece, the previously intended beneficiary, to the benefit of non family members.

Despite this knowledge, and despite the fact that he had made no prior inquiries concerning the Deanes or their relationship with Ms. Jacobs at the time that the live-in agreement was executed, the respondent made no inquiries about the background or circumstances of the Deanes or of their history and relationship with Ms. Jacobs other than to talk to them about the details of the will and trust and to obtain limited information about Ms. Jacobs' assets. The respondent did not advise Ms. Jacobs as to alternative arrangements or fiduciaries or advise her that his representation might be affected by his prior representation of, and receipt of payment from, the Deanes.

On November 24, 1991 Ms. Jacobs died. In January 1992 Ms. Deane presented Ms. Jacobs' 1990 will to the Plymouth County Probate and Family Court for allowance. The niece contested the will alleging, in part, that it was procured by the undue influence of the Deanes. On May 25, 1995, the Court ruled that the estate planning documents were null and void. The Court found that the Deanes had abused and financially exploited Ms. Jacobs and ruled that their conduct

constituted abuse and financial exploitation of an elderly person as defined in G.L. Chap. 19A, § 14.

The Court found, among other things, that the Deanes had confined Ms. Jacobs to her home, overmedicated her with illegally obtained painkillers, shut her off from her friends and neighbors, and failed to provide her with an operating telephone so that her friends and family could call her. The Court also ruled that the Deanes had overcome the free will of Ms. Jacobs and substituted their own will for hers and "that overmastering resulted in the making of grossly disproportionate gifts and benefactions to persons who were virtual strangers to her." Finally, the Court found that Ms. Jacobs did not have the benefit of truly independent legal advice at the time of the making and execution of the will, trust, deed, and power of attorney.

The respondent's conduct in representing Ms. Jacobs in the preparation and execution of estate planning documents by the terms of which the primary beneficiaries were his clients or former clients, the Deanes, and in a situation which it was not obvious that he could adequately represent the interests of each and without Ms. Jacobs' consent after full disclosure, constituted a conflict of interest, in violation of DR 5-105(A),(B),(C). The respondent's conduct in representing Ms. Jacobs in the preparation and execution of estate planning documents by the terms of which the primary beneficiaries were his clients or former clients, the Deanes, in circumstances where the documents were executed within a short time after the Deanes moved in with Ms. Jacobs and where Ms. Jacobs was known to be elderly, frail, and dependent on the Deanes; all without any investigation of the relationship between the parties, without ascertaining whether Ms. Jacobs understood the full implications of the documents, and without inquiry as to the reasons for the dramatic change in her estate plan, constituted inadequate preparation in violation of DR 6-101(A)(2) and a failure to adequately protect his client's interests in violation of DR 7-101(A)(1) and (3).

The respondent has been an active practicing attorney for over 40 years. Although the respondent paid insufficient attention to the surrounding circumstances and to the conflict of interest between clients, he had no significant personal or financial interest in the situation. The respondent had no long term or historical relationship with the beneficiaries, his only personal interest in the transactions were modest legal fees, the representation spanned only a few months and there was no evidence that his paramount loyalty was to the beneficiaries.

The matter came before the Board of Bar Overseers on a stipulation of facts and disciplinary violations and a joint recommendation for discipline by public reprimand. The Board accepted the parties' recommendation and imposed a public reprimand on August 24, 1999.

¹ Order (public reprimand) entered by the Board on August 24, 1999.

Please direct all questions to webmaster@massbbo.org.

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