

NEW YORK'S Women Leaders in the Law 2010

Law.com Home | Newswire | LawJobs | CLE Center | LawCatalog | Our Sites | Advertise

An ALM Web site

LAW.COM

Law.com Network | Legal Web

Search the Legal Web [Go >>](#)

LEGAL TECHNOLOGY | CORPORATE COUNSEL | SMALL LAW FIRMS | SUPREME COURT MONITOR | INTERNATIONAL NEWS | LEGAL BLOGS | LAW JOBS

Law.com Home > Mass. Judge Orders Two Lawyers to Refund \$329K in Excess Fees to Client's Estate

Font Size: [+](#) [-](#)

ADVERTISEMENT

Mass. Judge Orders Two Lawyers to Refund \$329K in Excess Fees to Client's Estate

Sheri Qualters

The National Law Journal | February 04, 2010

[Print](#) [Share](#) [Email](#) [Reprints & Permissions](#) [Post a Comment](#)



Boston attorney Gerald Nissenbaum

A Massachusetts probate judge recently ordered prominent Boston family lawyer **Gerald Nissenbaum** and another attorney to refund a client's estate nearly \$329,000 in excess legal fees.

Plymouth County Probate and Family Court Judge Stephen Steinberg's Jan. 14 order gave the attorneys 30 days to make the payments.

The **Barnstable County probate case, *In re Guardianship of Kenneth E. Simon***, ended up on Steinberg's docket after the Massachusetts Appeals Court recused Judge Robert Scandurra of the Barnstable Probate and Family Court in December 2007. The decision does not address the basis for that recusal.

According to Steinberg's order, Simon's guardian, E. James Veara of Dennis, Mass.-based **Zisson & Veara**, and Nissenbaum sought about \$500,000 in attorney and guardian fees for an 83-day guardianship of Simon, which ended with Simon's death on Nov. 2, 2005.

Simon's estranged children initiated the guardianship proceeding for their father in 2005, when they learned he was ill. They contacted Nissenbaum, who recommended Veara and two other attorneys as possible guardians to the court. According to the Steinberg's order, Veara agreed to hire Nissenbaum as his attorney even before he was appointed.

Steinberg's order requires Nissenbaum to repay Simon's estate more than \$199,000 and Veara to repay more than \$107,000. Together, the two lawyers must also repay the estate more than \$21,000 for payments to legal vendors during the guardianship.

In the meantime, **"Sex, Love and Money - Revenge and Ruin in the World of High-Stakes Divorce,"** a book Nissenbaum co-wrote with John Sedgwick, is slated for release on Thursday.

The Simon case was a textbook high-stakes divorce. Simon was a retired mutual fund manager who had \$4.5 million in assets in 2005. The children had fought with their father over his relationship with his wife, Anne, whom he married in July 2004.

According to court papers, Anne Simon had previously served jail time for running a Cape Cod prostitution ring. During the contentious guardianship, Veara and Nissenbaum attempted to get the couple divorced.

"From the very beginning of this case, the tactics undertaken by Nissenbaum and Veara were improper," wrote Steinberg, who determined that "Nissenbaum and Veara wildly spent the ward's money." He noted that Veara, who did not return a call for comment, increased his billing rate to \$400 per hour for the case from his average \$100 to \$300 per hour.

In a telephone interview, Nissenbaum said Steinberg "demonstrates his personal animus by failing to recognize that as a lawyer [to Veara,] I'm not a party to the case."

"Any lawyer looking at the decision would readily grasp the concept that a divorce lawyer representing a husband [for example] cannot be ordered to pay alimony on behalf of the husband, and that's what the judge did [here]," Nissenbaum said. "From a lawyer' point of view, that's the most dangerous thing that happened in this case."

Nissenbaum said he tried to get Steinberg recused from the case, but a single justice of the Massachusetts Appeals Court denied his motion.

Nissenbaum, who said his hourly rate was \$600 at the time of his work on the Simon case and is \$700 now, noted that three experts reviewed the lawyers' billings. "We have two experts and a retired appeals court judge who all found the work done by Mr. Veara and I were proper," Nissenbaum said.

Charles Waters, a Boston business litigation shareholder at Manchester, N.H.-based **Sheehan Phinney Bass + Green** who represents two of Simon's children who objected to the fees, said much of the strength of the case that condemns Veara's and Nissenbaum's conduct "is taken directly from their experts' own testimony on cross examination."

"That's in part what's so extraordinary is that their own experts on cross-examination really, really hurt them."

Waters said that Scandurra, the original judge on the case, filed a complaint about the two lawyers with the Massachusetts Board of Bar Overseers (BBO) several months after his recusal.

The Massachusetts Office of the Bar Counsel, which investigates complaints about lawyers, won't comment one way or the other about whether a complaint was filed or an investigation is ongoing, said first assistant bar counsel Nancy Kaufman.

How did the recession touch the upper echelons?

2010 GC Compensation Survey

CORPORATE COUNSEL

ADVERTISEMENT

Information is power in cost-effective firm management.
Call 888.770.5647 today

ALM LEGAL INTELLIGENCE

lawjobs.com

TOP JOBS
U.S. MAGISTRATE JUDGE
U.S. DISTRICT COURT OF NORTHERN TEX
Dallas, TX

Contract Attorney
EyeWonder, Inc
Atlanta, Georgia

MORE JOBS
POST A JOB

ADVERTISEMENT

Over 20 Hours
Average Per Lawyer
2010 Pro Bono Survey
Now available for download. ALM LEGAL INTELLIGENCE

Nissenbaum said the board "has taken no action."

"Even if the BBO wanted to look into my advocacy in this case, Judge Steinberg's finding would have no impact on the hearing before the BBO because I'm not a party to the case," Nissenbaum said.

He believes his role as Veara's lawyer in the Simon case also complicates his appeal options. He said he's conferring with appellate lawyers and is no longer representing Veara.

"My view is since I'm not a party to the case, I can't simply file a claim of appeal," Nissenbaum said.

A previous version of this article did not intend to suggest that, but for the royalties from his book, Gerald Nissenbaum lacked the funds to repay the legal fees.

Subscribe to The National Law Journal

[Print](#) [Share](#) [Email](#) [Reprints & Permissions](#) [Post a Comment](#)

[About ALM](#) | [About Law.com](#) | [Customer Support](#) | [Reprints](#) | [Privacy Policy](#) | [Terms & Conditions](#)
Copyright 2010. ALM Media Properties, LLC. All rights reserved.

