

2015 WL 1011457 (Mass.Super.) (Trial Pleading)
Superior Court of Massachusetts.
Norfolk County

Nancy GERARDI, as Personal Representative of the Estate of James Maxwell, Deceased, Plaintiff,

v.

Barry R. CRIMMINS; Law Offices of Barry R. Crimmins, P.C., Defendants.

No. CV2015-00249.
February 25, 2015.

Verified Complaint

Deborah M. Danger, DangerLaw, LLC, 60 Austin Street, Newton, Massachusetts 02460, (617) 789-4511, BBO No. 677272, for plaintiff Nancy Gerardi, as Personal Representative of the Estate of James Maxwell, Deceased.

[Peter W. Kortkamp](#), 52 Babcock Street, Brookline, Massachusetts 02446, (617) 308-7583, BBO No. 546425, for plaintiff Nancy Gerardi, as Personal Representative of the Estate of James Maxwell, Deceased.

I. PARTIES

1. Plaintiff Nancy Gerardi (“Gerardi”) is an individual residing at 11948 Jasper Road, Erie, Colorado 80516. Ms. Gerardi is the Personal Representative of the Estate of James Maxwell, Deceased, (the “Estate”).

2. Co-Defendant Barry R. Crimmins (“Crimmins”) is an attorney admitted to practice in Massachusetts, with an office and principal place of business at 909 Washington Street, Stoughton, Massachusetts 02072 and also at 668 Main Street, Falmouth, Massachusetts 02540. Upon information and belief, Crimmins resides at 89 Glover Drive, Stoughton, Massachusetts 02072.

3. Co-Defendant Law Offices of Barry R. Crimmins, P.C., (“Crimmins Law Office”) is a professional corporation having a principal place of business at 909 Washington Street, Stoughton, Massachusetts 02072, and also 668 Main Street, Falmouth, Massachusetts 02540. Upon information and belief, Crimmins is the Principal of Crimmins Law Office.

II. JURISDICTION AND VENUE

4. This Court has personal jurisdiction over Crimmins because Crimmins maintains an office and principal place of business within Massachusetts and because Crimmins resides within Massachusetts.

5. This Court has personal jurisdiction over Crimmins Law Office because Crimmins Law Office maintains an office and principal place of business within Massachusetts.

6. This Court has subject-matter jurisdiction because the instant Complaint contains one or more claims cognizable under Massachusetts law upon which relief can be granted.

7. Venue properly lies in this Court because Crimmins resides in Norfolk County, Massachusetts, because Crimmins maintains an office and principal place of business within said Norfolk County, and because Crimmins Law Office maintains a principal place of business within Norfolk County, Massachusetts.

III. FACTS

8. In or about early June 2010 Gerardi's mother-in-law Louise Maxwell, late of Stoughton, Massachusetts, ("Mrs. Maxwell") engaged Crimmins to perform estate planning services her. Crimmins failed to timely and competently fulfill the undertaking he made to Mrs. Maxwell and Crimmins's malfeasance has cost Mrs. Maxwell's family well over \$600,000 in otherwise unnecessary tax, legal expense, and related costs.

9. At all times relevant to the claims set forth herein, Crimmins represented that he would timely and competently provide estate planning services. Crimmins Law Office on its website solicits estate planning clients specifically and touts Crimmins's supposed expertise in estate planning. Crimmins and Crimmins Law Office, in addition, routinely solicit estate planning clients via advertising.

10. On June 2, 2010 Gerardi and Mrs. Maxwell met with Crimmins to discuss Mrs. Maxwell's estate planning needs and objectives (the "Estate Planning Meeting"). The Estate Planning Meeting occurred at Crimmins Law Office.

11. Upon information and belief, prior to the Estate Planning Meeting Crimmins asked Mrs. Maxwell to complete a questionnaire (the "Estate Planning Questionnaire") as to Mrs. Maxwell's assets and Mrs. Maxwell's estate planning needs and objectives. Upon information and belief, Mrs. Maxwell completed the Estate Planning Questionnaire and gave the Estate Planning Questionnaire to Crimmins.

12. Immediately prior to the Estate Planning Meeting, Gerardi emphasized to Crimmins that Mrs. Maxwell suffered both from congestive heart failure and diabetes and that Mrs. Maxwell's husband James ("Mr. Maxwell") was in declining health, was having difficulty walking, and had fallen numerous times. Mrs. Maxwell at this time was in her mid-eighties and Mr. Maxwell was approaching ninety years of age. Crimmins thus was on notice that Mrs. Maxwell's estate planning needs were urgent.

13. The Estate Planning Meeting lasted approximately two hours. Other than a period of between ten and fifteen minutes when Mrs. Maxwell met privately with Crimmins, Gerardi was present throughout the entire Estate Planning Meeting. Crimmins had the Estate Planning Questionnaire in front of him at all times during the Estate Planning Meeting when Gerardi was present. Crimmins reviewed the Estate Planning Questionnaire with Mrs. Maxwell and inquired of Mrs. Maxwell concerning how Mrs. Maxwell wanted to dispose of her assets. Crimmins took notes throughout the Estate Planning Meeting.

14. Upon information and belief, at the time of the Estate Planning Meeting Mrs. Maxwell's Estate equaled approximately \$6,000,000. Estate tax planning necessarily, therefore, was an indispensable element of any and all estate planning work to be undertaken for Mrs. Maxwell at the time of Estate Planning Meeting.

15. At the conclusion of the Estate Planning Meeting Mrs. Maxwell wrote Crimmins a check for \$250.00. Upon information and belief, Mrs. Maxwell's \$250.00 check represented a down-payment on account of estate planning services Crimmins had agreed to provide for Mrs. Maxwell. Upon further information and belief, Crimmins did not explain to Mrs. Maxwell what he was going to charge overall for Mrs. Maxwell's estate planning and did not explain how his fees would be calculated, both of which are ethical violations.

16. Crimmins, in Gerardi's presence, at the conclusion of the Estate Planning Meeting, told Mrs. Maxwell he would have estate planning documents ready for Mrs. Maxwell within six weeks of the Estate Planning Meeting. Previously, by letter to Mrs. Maxwell dated May 6, 2010, Crimmins had told Mrs. Maxwell her documents would be ready for her to review within three to four weeks of the then-upcoming Estate Planning Meeting.

17. Crimmins did not live up to the schedule he laid out for Mrs. Maxwell. Instead, upon information and belief, Crimmins wrote to Mrs. Maxwell saying he needed more time. Mrs. Maxwell's health meanwhile had continued to deteriorate.

18. Because of Mrs. Maxwell's increasingly poor health, and because Crimmins had not yet produced documents for Mrs. Maxwell, not even drafts, in or about early July 2010 Gerardi undertook computer research as to testamentary language Mrs. Maxwell might use as a will. Gerardi emailed suggested testamentary language (the "Will Language") to Mrs. Maxwell.

19. Based on, and incorporating the Will Language, on or about July 29, 2010 Mrs. Maxwell signed a document entitled "Last Will and Testament of Louise Maxwell" ("Mrs. Maxwell's Will"), reading in its entirety as follows:

I, Louise Maxwell, being of sound mind, make this record of my last will and testament. At my death I want my entire estate to go to my husband, James Maxwell. If his death precedes mine, I want all my entire estate to be divided between my son, David Gerardi, and my daughter Gwendolyn Gerardi.

20. By the Spring of 2011 Mrs. Maxwell's health had declined even further and she was now hospitalized. Crimmins still had produced no estate planning documents at all for Mrs. Maxwell to sign. Gerardi advised Crimmins of Mrs. Maxwell's situation and called upon Crimmins to perform the work he had undertaken a year previously to do.

21. By letter dated May 18, 2011 addressed to Gerardi, but not Mrs. Maxwell, Crimmins wrote to Gerardi enclosing drafts of estate planning documents. Crimmins acknowledged that one of his drafts, a so-called "family trust," was incomplete. In other words, less than a month shy of an entire year after Crimmins originally had agreed to provide estate planning services to Mrs. Maxwell, whom he at all times knew to be in poor health, **elderly**, and frail, Crimmins still had not completed his task. Crimmins' s lengthy **neglect** of Mrs. Maxwell's estate planning comprises a breach of ethics.

22. Within days of Crimmins's May 18, 2011 letter to Gerardi, as aforesaid, Crimmins appeared at Mrs. Maxwell's hospital room (the "Hospital Meeting") with documents for Mrs. Maxwell to sign. Upon information and belief, the documents Crimmins had with him at the Hospital Meeting included both a will and a trust for Mrs. Maxwell to sign. Gerardi was present throughout the Hospital Meeting.

23. Mrs. Maxwell did not sign the documents Crimmins brought to the Hospital Meeting and Crimmins departed. The Hospital Meeting was the last occasion on which Crimmins met with Mrs. Maxwell or otherwise communicated with Mrs. Maxwell. Mrs. Maxwell died several days later, on June 1, 2011.

24. Within days of the Hospital Meeting Crimmins demanded an additional \$2,500.00. On Mrs. Maxwell's behalf Mrs. Gerardi paid Crimmins the sum he demanded. Crimmins by now had been paid at least \$2,750.00 on account of legal work for Mrs. Maxwell that Crimmins still had not completed.

25. Meanwhile, Mrs. Maxwell's husband James's health markedly was deteriorating. As of the day of the Hospital Meeting Mr. Maxwell was confined to a nursing home.

26. Upon information and belief, Mr. Maxwell never retained Crimmins to perform any estate planning services or other legal work for him and, upon further information and belief, Mr. Maxwell at no time entered into any written engagement letter or retainer agreement whatsoever with Crimmins authorizing or in any way directing Crimmins to perform estate planning or other legal services for Mr. Maxwell. Nevertheless, on or about on May 26, 2011, Crimmins appeared at Mr. Maxwell's nursing home (the "Nursing Home Meeting") with various legal documents for Mr. Maxwell to sign. Upon further information and belief, the documents Crimmins brought with him to the Nursing Home Meeting included the same documents Crimmins had with him at the Hospital Meeting, with names and pronouns changed to reflect Mr. Maxwell rather than Mrs. Maxwell as the signatory. Gerardi was present throughout the entire Nursing Home Meeting.

27. At Crimmins's direction during the Nursing Home Meeting on May 26, 2011 Mr. Maxwell signed a Will ("Mr. Maxwell's Will") and a Revocable Trust ("The Maxwell Family Trust"). Mr. Maxwell's Will provided for the distribution of Mr. Maxwell's residuary estate to The Maxwell Family Trust. The Maxwell Family Trust in turns provides for a discretionary income and

principal interest for Mr. Maxwell and Mrs. Maxwell extending until the death of their survivor. The Maxwell Family Trust further provides, upon the death of the survivor of Mr. Maxwell and Mrs. Maxwell, for distribution of its then remaining assets in thirds to a separate trust for Mrs. Maxwell's daughter Gwendolyn, to a continuing trust for Mrs. Maxwell's son David, and to Gerardi outright. Crimmins's obtaining Mr. Maxwell's signature at the Nursing Home Meeting on documents Mr. Maxwell never before had seen, and had not authorized Crimmins to prepare for him, is a breach of ethics.

28. Crimmins's name appears as successor trustee of The Maxwell Family Trust. The Maxwell Family Trust does not contain provisions by which Crimmins could be removed as successor trustee following Mr. Maxwell's death.

29. At or shortly after the Nursing Home Meeting Crimmins demanded, and was paid, an additional \$5,500.00 on account of legal work he purportedly had done for the Maxwells, bringing what Crimmins thus had been paid to \$8,250.00.

30. The discretionary income and principal interest included in The Maxwell Trust for Mrs. Maxwell's benefit would not have qualified for either the Federal or the Massachusetts estate tax marital deduction. Thus, if Mrs. Maxwell had survived Mr. Maxwell, there would have been no estate tax marital deduction available in Mr. Maxwell's estate. This failure by Crimmins correctly to take into account the tax consequences for Mr. Maxwell's estate of Mrs. Maxwell possibly surviving Mr. Maxwell is a violation of professional ethics.

31. The continuing trust for Mrs. Maxwell's son David that is contained within The Maxwell Family Trust lacks directions for how it is to be administered for David during the continuing trust's existence. Likewise, The Maxwell Family Trust is silent as to how the continuing trust for David was to be distributed in the event David were to die while the continuing trust still was in existence. As to David's continuing trust, The Maxwell Family Trust instead provides only as follows:

[T]he above share to be paid to David G. Gerardi, or any portion thereof, shall continue to be held by the Trustee or Trustees then serving hereunder, and not outright to David G. Gerardi, if at such time David G. Gerardi is incarcerated or is under a legal disability, or if not incompetent, in the sole discretion of the Trustee or Trustees then serving hereunder that [sic] David G. Gerardi would not be able to administer such amount properly or in a prudent or responsible manner.

32. Crimmins's failure to include provisions in The Maxwell Family Trust specifying (i) how the continuing trust therein for David Gerard's benefit is to be administered and (ii) how assets of the trust would be distributed upon David's death requires a reformation or restructuring of The Maxwell Family Trust, whether judicially or otherwise. Crimmins's failure to draft David's continuing trust competently is a breach of professional ethics.

33. As between Mr. Maxwell and Mrs. Maxwell, Mrs. Maxwell died first. Mrs. Maxwell died June 1, 2011. Mr. Maxwell died approximately three weeks later, on June 20, 2011.

34. Gerardi retained Crimmins as attorney for the estates of both Mr. and Mrs. Maxwell.

35. Neither Federal estate tax nor Massachusetts estate tax was due from Mrs. Maxwell's estate.

36. In contrast to Mrs. Maxwell's estate, Mr. Maxwell's estate owed a substantial tax. No Federal estate tax was due from Mr. Maxwell's estate, but Mr. Maxwell's estate paid \$603,800.00 in Massachusetts estate tax.

37. The \$603,800.00 in Massachusetts estate tax for which Mr. Maxwell's estate became liable is attributable entirely to Crimmins's failure to timely and competently complete Mrs. Maxwell's estate planning and his failure to provide timely and competent legal services to Mr. Maxwell after Mrs. Maxwell's death. Had Crimmins timely and competently planned Mrs. Maxwell's estate, the entire Massachusetts estate tax exemption that was available to Mrs. Maxwell could have been removed from inclusion in Mr. Maxwell's taxable estate when Mr. Maxwell later died. Had Crimmins taken steps to reduce Mr. Maxwell's

estate to the Massachusetts estate tax exemption to which Mr. Maxwell was entitled, no Massachusetts estate tax at all would have been due as to Mr. Maxwell's estate. In addition, Mr. and Mrs. Maxwell's estates paid more in probate court filing fees than would have been the case if Crimmins had taken the steps described in this Paragraph. Crimmins's mishandling of Mrs. Maxwell's estate planning and his mishandling of Mr. Maxwell's assets, as described in this Paragraph, are violations of legal ethics.

38. By letter to Crimmins dated January 31, 2013, Gerardi requested that Crimmins provide her with Crimmins's files on Mr. and Mrs. Maxwell and their estates. Gerardi also, by letter to Crimmins dated January 31, 2013, requested an accounting from Crimmins of all services he claimed to have rendered to Mr. and Mrs. Maxwell's estates. Crimmins responded by demanding, as a precondition to releasing any materials, payment on account of supposedly unpaid fees for his work on the Maxwells' estates. Crimmins refusal to release his Maxwell files to Gerardi without being paid in advance of doing so is a violation of professional ethics.

39. Crimmins did not provide the accounting Gerardi requested in her January 31, 2013 letter to Crimmins. Crimmins's failure to provide the accounting Gerardi requested is a violation of professional ethics.

40. On or about February 7, 2013 Gerardi's attorney Deborah M. Danger issued a check on Gerardi's behalf payable to Crimmins Law Office in the amount of \$4,930.50, following which Crimmins released a portion, but not all, of his files on Mr. and Mrs. Maxwell and the Maxwells' estates.

41. By letter to Crimmins dated January 19, 2015 Gerardi once again requested all files in Crimmins's possession related to Mr. and Mrs. Maxwell, the Maxwells' estates, and The Maxwell Family Trust. Crimmins has produced no documents in response to Gerardi's January 19, 2015 letter. This is a further violation of professional ethics on Crimmins's part.

42. By letter dated January 21, 2015 (the "Demand Letter") Gerardi, through her attorneys, notified Crimmins of claims against Crimmins on Gerardi's part, including claims under Massachusetts General Laws Chapter 93A, all as set forth herein. Crimmins has not responded to the Demand Letter.

IV. COUNTS

Count One - Breach of Contract

43. Gerardi repeats and re-alleges the preceding Paragraphs 1 through 42 hereof as if now again averred in full.

44. Crimmins and/or Crimmins Law Office failure to timely and competently perform legal services that Crimmins and/or Crimmins Law Office agreed to provide, together with Crimmins's numerous ethical violations, have damaged the estate of Mr. Maxwell, The Maxwell Family Trust, and/or the family of Louise Maxwell and James Maxwell.

45. Crimmins and/or Crimmins Law Office is/are in breach of contract and is/ are liable accordingly.

Count Two - Negligence

46. Gerardi repeats and re-alleges the preceding Paragraphs 1 through 45 hereof as if now again averred in full.

47. By not timely and competently performing legal services Crimmins and/or Crimmins Law Office undertook to provide, and by committing numerous ethical violations, Crimmins and/or Crimmins Law Office failed to adhere to one or more duties of care he/it owed and, as a consequence, the estate of Mr. Maxwell, The Maxwell Family Trust, and/or the family of Louise Maxwell and James Maxwell has/have been damaged.

48. Crimmins and/or Crimmins Law Office has/have committed negligence and is/are liable accordingly.

Count Three - Fraud and Misrepresentation

49. Gerardi repeats and re-alleges the preceding Paragraphs 1 through 48 hereof as if now again averred in full.

50. Crimmins and/or Crimmins Law Office fraudulently misrepresented that he/it was/were capable of providing timely and competent legal services and, as a consequence, the estate of Mr. Maxwell, The Maxwell Family Trust, and/or the family of Louise Maxwell and James Maxwell has/have been damaged.

51. Crimmins and/or Crimmins Law Office has/have committed fraud and misrepresentation and is/are liable accordingly.

Count Three - Malpractice

52. Gerardi repeats and re-alleges the preceding Paragraphs 1 through 51 hereof as if now again averred in full.

53. Crimmins's and/or Crimmins Law Office's failure to provide timely and competent legal services, as well as Crimmins's serial violations of legal ethics, constitute malpractice and, as a consequence, the estate of Mr. Maxwell, The Maxwell Family Trust, and/or the family of Louise Maxwell and James Maxwell has/have been damaged.

54. Crimmins and/or Crimmins Law Office has/have committed malpractice and is/are liable accordingly.

Count Five - Unfair or Deceptive Acts or Practices

55. Gerardi repeats and re-alleges the preceding Paragraphs 1 through 54 hereof as if now again averred in full.

56. By acting in breach of contract, by acting negligently, by misrepresenting legal services he and/or it would perform, by repeatedly violating the rules of legal ethics, and by committing malpractice, Crimmins and/or Crimmins Law Office has/have committed one or more unfair or deceptive acts or practices in the course of a trade or commerce within the meaning of Chapter 93A of the General Laws of Massachusetts. As a consequence of this malfeasance on the part of Crimmins and/or Crimmins Law Office, the estate of Mr. Maxwell, The Maxwell Family Trust, and/or the family of Louise Maxwell and James Maxwell has/have been damaged.

57. Crimmins and/or Crimmins Law Office has/have committed one or more unfair or deceptive acts or practices in the conduct of a trade or commerce in Massachusetts within the meaning of Chapter 93 A of the General Laws of Massachusetts and is/are liable accordingly.

V. JURY DEMAND

Gerardi demands trial by jury as to matters stated herein and so triable.

WHEREFORE Plaintiff Nancy Gerardi, as Personal Representative of the Estate of James Maxwell, Deceased, respectfully prays that this Court enter judgment in her favor as to each and every Count stated herein, and that this Court award Plaintiff the following:

(1) Compensatory damages in such amount as the Court may determine, together with interest and costs;

(2) Treble damages, attorneys fees, interest, and costs;

(3) Such other and further relief as the Court deems just and proper in the premises.

Respectfully submitted.

NANCY GERARDI, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF JAMES MAXWELL, DECEASED,

By her attorneys:

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Of Counsel

February 24, 2015

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