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September 21, 2017

Mark Neary, Clerk
Supreme Court of New Jersey
P.O. Box 970
Trenton, New Jersey 08625-0962

Re: **In the Matter of Brian McDevitt**
Docket No. DRB 17-249
District Docket No. XIV-2017-0152E

Dear Mr. Neary:

The Disciplinary Review Board reviewed the motion for discipline by consent (six-month suspension or such lesser discipline as the Board deems appropriate) filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-10(b)(1). Following a review of the record, the Board determined to grant the motion. In the Board's view, a six-month suspension is the appropriate discipline for respondent's violations of RPC 1.2(d) (counseling or assisting in conduct that the lawyer knows is illegal, criminal or fraudulent); RPC 1.7(a) (concurrent conflict of interest); RPC 3.3(a)(1), (a)(4), and (a)(5) (lack of candor to a tribunal); RPC 4.1(a)(1) (making a false statement of material fact or law to a third person); RPC 8.1(a) (knowingly making a false statement of material fact in connection with a disciplinary matter); RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation); and RPC 8.4(d) (conduct prejudicial to the administration of justice).

Specifically, in 2005, respondent was retained to represent the estate of Magdaleno Jurado, who had died, intestate, in New Jersey. Jurado had three children, Benjamin Jr., Benjamin III,

and Benjamin IV. Benjamin IV had predeceased Jurado, leaving three children of his own, Jayson, John, and Diana, as the heirs to one-third of Jurado's estate.

On July 27, 2005, Benjamin Jr. and Benjamin III retained respondent to administer and close Jurado's estate. Respondent requested and received renunciations of administrator rights from Jayson, John, and Diana, but neither respondent nor his paralegal, Lucinda Schwebel, who was a notary, witnessed their execution.

Respondent then instructed Schwebel to notarize the signatures of Jayson and John on the renunciations. Schwebel followed respondent's improper instruction, and dated her false jurats as of August 5, 2005. On October 5, 2005, respondent submitted Jayson and John's renunciations, including the false jurats, to the Mercer County Surrogate's Court. That same date, relying on the illegitimate renunciations, the Mercer County Surrogate's Court issued Letters of Administration for the Jurado estate to Benjamin Jr. and Benjamin III. Respondent, thus, violated RPC 3.3(a)(1), (a)(4), and (a)(5); and RPC 8.4(c) and (d).¹

On December 24, 2005, Benjamin III died intestate and was survived by his wife, Jeanette, and their three children, Benice, Bernadette, and Fatima. Benjamin III's family retained respondent to administer his estate, which consisted solely of his one-third interest in the Jurado estate. Respondent did not obtain the informed, written consent of the beneficiaries of either estate to the representation, and, thus, violated RPC 1.7(a).

Following Benjamin III's death, respondent sought and received Amended Letters of Administration for the Jurado estate, naming Benjamin Jr. the sole administrator. In early 2007, however, Benjamin Jr. began suffering from severe dementia. On June 6, 2007, Benjamin Jr. appointed his daughter, Maria, as his acting power of attorney.

¹ Although respondent's conduct in directing his paralegal to notarize signatures she had not witnessed violated RPC 5.3(c)(1), neither the stipulation nor the affidavit of consent included that RPC violation.

On May 17, 2008, Maria informed respondent, in writing, that Benjamin Jr. was unable to manage his affairs, including the administration of the Jurado estate, due to his dementia. She provided respondent with a copy of the power of attorney appointing her as his agent. Respondent made no effort to confirm Benjamin Jr.'s medical condition, to determine the extent of his disability, or to consider whether a Substitute Administrator for the Jurado estate should be appointed.

From May 17, 2008 forward, respondent repeatedly counseled Jurado's heirs to take unlawful "shortcuts" in administering the estate. On multiple occasions, he instructed Maria to forge her father's name on deeds, title affidavits, and HUD-1s; he then notarized the HUD-1, falsely certifying that Benjamin Jr. had sworn to the authorization when, in reality, he was in a psychiatric hospital. Respondent, thus, violated RPC 1.2(d), RPC 4.1(a)(1), and RPC 8.4(c) and (d).

Respondent ultimately opened a checking account for the Jurado estate, identifying Benjamin Jr. as the sole authorized signatory. As Jurado's assets were liquidated, all proceeds were deposited into the account. Respondent prepared "a number of checks" from the estate account and sent them to Maria to approve and to, once again, forge Benjamin Jr.'s signature. Respondent, thus, again violated RPC 1.2(d), and RPC 8.4(c) and (d).

Respondent then falsely represented to both the District Ethics Committee and OAE investigators that he was unaware of the incapacitation of Benjamin Jr. until June 2009, and that Benjamin Jr. was present at the closing of the sale of Jurado's prior residence. Respondent, thus, violated RPC 8.1(a).

Respondent's most egregious misconduct was his calculated misrepresentations to both the Mercer County Surrogate's Court and the buyers, title company, and other third parties involved in the sale of Jurado's prior residence. In connection with his representation of the Jurado estate, he violated RPC 3.3(a)(1), (a)(4), and (a)(5), RPC 8.4(c), and RPC 8.4(d) by making misrepresentations, under penalty of perjury, to complete the administration of the estates.

Cases involving egregious instances of lack of candor to a tribunal, even where the attorney has a non-serious ethics

history, have resulted in the imposition of terms of suspension. See, e.g., In re Forrest, 158 N.J. 428 (1999) (six-month suspension for failure to disclose the death of client to the court, to the adversary, and to an arbitrator; the attorney's motive was to obtain a personal injury settlement; prior private reprimand); In re Marshall, 165 N.J. 27 (2000) (one-year suspension for withholding a material fact from the adversary and the court, serving false answers to interrogatories, and permitting the client to produce misleading documents; no prior discipline); and In re Kornreich, 149 N.J. 346 (1997) (three-year suspension for misrepresenting to the police, to own lawyer, and to a municipal court judge, in connection with an accident, that a babysitter had been operating the vehicle; the attorney also presented false evidence in an attempt to falsely accuse the babysitter of her own wrongdoing; no prior discipline).

Similarly, cases involving egregious violations of RPC 8.4(c), even where the attorney has a non-serious ethics history, have resulted in the imposition of terms of suspension. See, e.g., In re Carmel, 219 N.J. 539 (2014) (three-month suspension for fabrication of a lis pendens in a foreclosure action; attorney was attempting to deceive the IRS regarding its lien priority and mask his own malpractice; no prior discipline); In re Steiert, 220 N.J. 103 (2014) (six-month suspension for attempt to coerce former client to execute false statements in respect of a disciplinary proceeding; the conduct was found to be akin to criminal witness tampering; prior reprimand); and In re Franco, 227 N.J. 155 (2016) (one-year suspension for assisting client in securing a bridge loan under false pretenses, violating duties as escrow agent, and withholding material facts from the lender after default; the attorney also repeatedly lied under oath during civil and disciplinary proceedings in a brazen effort to avoid liability and sanction; prior three-month suspension).

The Board regards as serious respondent's deception toward tribunals, and his egregious, calculated pattern of fraud, similar to the conduct of the attorneys in Forrest, Steiert, Carmel, and Franco. In his representation of the Jurado estate, respondent exhibited an escalating willingness to deceive, making documented misrepresentations to the Mercer County Surrogate's Court, beneficiaries, third parties, and New Jersey disciplinary authorities. In aggravation, respondent violated the rights of the beneficiaries of both estates and perpetrated

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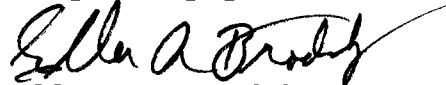
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a fraud on both the title company and the lender associated with the sale of Jurado's residence. In mitigation, respondent has no disciplinary history. Accordingly, the Board determined a six-month suspension to be the proper quantum of discipline for respondent's misdeeds.

Enclosed are the following documents:

1. Notice of motion for discipline by consent (undated);
2. Stipulation of discipline by consent, dated July 6, 2017;
3. Affidavit of consent, dated June 26, 2017; and
4. Ethics history, dated September 21, 2017.

Very truly yours,



Ellen A. Brodsky
Chief Counsel

Enclosures

c: Bonnie C. Frost, Chair

Disciplinary Review Board (w/o enclosures)

Charles Centinaro, Director

Office of Attorney Ethics (w/o enclosures)

Christina Blunda Kennedy, Deputy Ethics Counsel

Office of Attorney Ethics (w/o enclosures)

Brian McDevitt, Respondent (w/o enclosures)