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April 28, 2016

Mark Neary, Clerk
Supreme Court of New Jersey
Post Office Box 970
Trenton, New Jersey 08625

Re: In the Matter of James John Callahan
Docket No. DRB 16-028
District Docket No. XIV-2014-0419E
Motion for Discipline by Consent

Dear Mr. Neary:

The Disciplinary Review Board reviewed the motion for discipline by consent (reprimand or such lesser discipline as the Board may deem warranted) filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-10(b). Following a review of the record, the Board determined to grant the motion. In the Board's view, a reprimand is the appropriate discipline for respondent's gross neglect (RPC 1.1(a)), lack of diligence (RPC 1.3), failure to communicate with the beneficiaries of an estate (RPC 1.4(b)), and failure to promptly deliver funds to a third party (RPC 1.15(b)).

Specifically, respondent represented Gertrude Wilhelm (Gertrude) in various legal matters over the years. Gertrude died in 2000. Respondent was the executor of her estate, whose sole beneficiary was her mother, Martha Wilhelm (Martha).

On August 28, 2003, Martha executed a will, prepared by respondent, in which he was named executor of the estate. Martha's will listed five heirs: Heinz Maurushat (Heinz), Dieter Kawa

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(Dieter), Friedrich Schmidt, a/k/a Frederick (Friedrich), Elsie Tuttle (Elsie) and Lori Hrinewski (Lori). The percentage of their shares varied.

Martha's estate comprised her Jersey City residence, stocks, bonds, and bank accounts. The total value was approximately \$1.3 million. This figure did not include the value of Gertrude's estate, of which Martha was the sole beneficiary.

Martha died on May 17, 2008. On June 27, 2008, her will was admitted to probate. On August 19, 2008, respondent sent a notice of probate to Martha's heirs and informed them that, "[g]iven the nature of the assets, the geographic disparity of the heirs, and the current economic climate, the administration of the estate should take a year or more to complete."

More than a year later, on October 20, 2009, respondent provided the heirs with a written update on the status of Martha's estate, stating that the administration of the estate had been further delayed by "uncertain economic conditions," including the downturn in the real estate market, and the poor condition and location of the Jersey City property. Nevertheless, respondent anticipated possible distribution of the assets in the spring of 2010, if not earlier.

Thereafter, between December 2009 and November 2014, respondent received numerous inquiries, status requests, and requests for an accounting from four of the five beneficiaries of Martha's will. During that period of time, two beneficiaries died, requiring their personal representatives to seek information from respondent.

Specifically, beginning in December 2009, Lori began to request status updates. In March 2010, Lori expressed dissatisfaction with respondent's handling of the estate and requested copies of probate and tax documents, as well as an accounting of the estate's assets and liabilities, noting that nearly two years had passed since Martha's death. Although respondent replied to Lori's inquiry, his reply was not responsive to her request and did not include an accounting. Lori persisted in her request, but respondent refused to provide further information, stating that the information she was seeking would be the subject of a final accounting, which had not yet issued. Consequently, Lori wrote to the Surrogate to attempt to obtain a copy of any documents

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filed, beyond the will. It was not until September 29, 2010 that respondent finally provided an accounting and made a partial distribution to Lori. Almost a full year later, on September 27, 2011, respondent made a "final" distribution to Lori and provided a "final" accounting. However, neither the accounting nor the distributions included the value of Martha's interest in Gertrude's estate because respondent never completed the administration of that estate. Thus, Lori did not receive the full value of her interest in Martha's estate.

On August 25, 2011, Friedrich died, leaving his son, Kurt, as the executor of his estate. Up to that point, Friedrich had received no distributions from Martha's estate. Thus, Kurt's attorney, Lawrence Tenopir, contacted respondent to inquire about the status of Martha's estate. In September of that year, respondent sent the "final" accounting to Kurt (again, which did not include the value of Martha's interest in Gertrude's estate), along with a distribution schedule and release and refunding bond. In January 2012, Tenopir sent respondent a copy of Kurt's letters testamentary, authorizing him to act in behalf of Friedrich's estate. Thereafter, beginning in March 2012 and continuing through July 2012, Tenopir made several follow-up inquiries to respondent regarding the status of the estate. Respondent replied to only one of those inquiries, promising to provide more responsive information at some date in the future. Finally, on September 11, 2012, respondent issued a check to the Friedrich estate, which represented a "final" distribution. However, the distribution did not include the value of Martha's interest in Gertrude's estate, which still remained open. Thus, Friedrich's estate did not receive the full value of its interest in Martha's estate. As of July 31, 2013, respondent still had not provided Tenopir with an accounting of the funds he claimed he was holding to satisfy estimated taxes.

In June 2012, respondent made two partial distributions to Dieter. He did not make a "final" distribution to him until March 2013. As with the others, the distributions combined did not include the value of Martha's interest in Gertrude's estate. Thus, Dieter did not receive the full value of his interest in Martha's estate. Moreover, respondent ignored Dieter's requests for a final accounting, the latest of which he made in February 2015.

Heinz died on an unidentified date. Under the terms of Martha's will, his share was to be distributed to his wife Gerda. On November 7, 2014, respondent requested that Gerda provide him

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with a copy of Heinz's death certificate and an executed release and refunding bond. He never heard from her, and failed to follow up his request.

Martha's house was never formally listed for sale with a real estate agent.

As of the date of the stipulation, that is, January 26, 2016, all heirs, except Heinz, had received their full and final distribution from Martha's estate. The distributions, however, did not include Martha's interest in Gertrude's estate. Further, as of January 26, 2016, respondent still had not closed either Gertrude's or Martha's estate. His failure to close Gertrude's estate precluded him from closing Martha's estate because Martha was Gertrude's sole beneficiary.

The Board found that respondent violated RPC 1.1(a) and RPC 1.3 in the following respects: (1) he had not closed the estates of Martha or Gertrude, who had died seven and fifteen years earlier, respectively; (2) he provided a deficient final accounting for Martha's estate because it did not include Martha's interest in Gertrude's estate, leaving the beneficiaries of Martha's estate with less money than they were entitled to receive; and (3) he failed to list Martha's house for sale, requiring the continued payment of utility and alarm system bills, homeowners insurance, and taxes.

The Board also found that respondent violated RPC 1.4(b) by failing to provide Martha's heirs with updates and to respond to their inquiries "on a timely basis." Finally, respondent violated RPC 1.15(b) because, despite filing a notice of probate for Martha's estate on August 19, 2008, he did not make any distribution until October 15, 2010, when he sent a partial distribution to Lori. In addition, he delayed other distributions as follows: to Elsie, on November 3, 2011; to Kurt, in November 2014; to Dieter, from June 2012 through September 2013; and to Gerda, nothing.

The stipulation of consent cited, in mitigation, respondent's unblemished ethics history since his admission to practice in 1982. The stipulation further acknowledged the difficulty respondent encountered in communicating with international heirs, some of whom spoke a foreign language, and the challenges of selling Martha's house, which was in poor condition and located in a blighted area -

all during a downturn in the real estate market.

The Board determined to impose a reprimand for respondent's misconduct. In re Bluit, 181 N.J. 302 (2004) (reprimand imposed on attorney who failed to close an estate, thereby incurring additional expenses, failed to communicate with the beneficiaries, and failed to reconcile her attorney trust account; violations of RPC 1.1(a), RPC 1.3, RPC 1.4(a) and (b), and RPC 1.15(b) and (d); although the attorney had a prior private reprimand, the Board was of the view that it did not warrant an increase in the discipline imposed). See also In re Weiss, 173 N.J. 323 (2002); In re Cheek, 162 N.J. 98 (1999); and In re Morris, 152 N.J. 155 (1998). Given respondent's failure to finalize either estate, one of which has been pending for fifteen years, the Board found that the mitigating factors cited were insufficient to reduce the reprimand to an admonition.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated January 27, 2016;
2. Stipulation of discipline by consent, dated January 26, 2016;
3. Affidavit of consent, dated December 30, 2015;
4. Ethics history, dated April 28, 2016.

Very truly yours,



Ellen A. Brodsky
Chief Counsel

EAB/ac

Enclosures

c: (w/o encls.)

Bonnie C. Frost, Chair

Disciplinary Review Board

Charles Centinaro, Director

Office of Attorney Ethics

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Kurt Schmidt, Grievant