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**OF THE**  
**SUPREME COURT OF NEW JERSEY**

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RICHARD J. HUGHES JUSTICE COMPLEX  
P.O. BOX 962  
TRENTON, NEW JERSEY 08625-0962  
(609) 815-2920

ELLEN A. BRODSKY  
CHIEF COUNSEL  
  
MELISSA URBAN  
DEPUTY COUNSEL  
  
TIMOTHY M. ELLIS  
LILLIAN LEWIN  
BARRY R. PETERSEN, JR.  
COLIN T. TAMS  
KATHRYN ANNE WINTERLE  
ASSISTANT COUNSEL

February 28, 2019

Heather Joy Baker, Clerk  
Supreme Court of New Jersey  
P.O. Box 970  
Trenton, New Jersey 08625-0962

Re: **In the Matter of Agnes S. Wladyka**  
Docket No. DRB 18-354  
District Docket No. XIV-2016-0360E  
**CORRECTED LETTER**

Dear Ms. Baker:

The Disciplinary Review Board reviewed the motion for discipline by consent (reprimand or such lesser discipline as the Board deems appropriate) 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 measure of discipline for respondent's violations of RPC 1.1(a) (gross neglect), RPC 1.5(b) (failure to set forth in writing the rate or basis of a legal fee), and RPC 1.15(d) and R. 1:21-6(a)(2) (recordkeeping violations; attorney fees must be deposited in an attorney business account).

Specifically, in 1999, respondent assumed the representation of a seventy-four-year-old client, "J.D." J.D. resides in her own home, is widowed, and has no children. She receives social security, a pension, and a monthly annuity. Respondent was introduced to J.D. by Catherine Picut-Parker, who had been J.D.'s designated attorney-in-fact and healthcare proxy prior to Picut-Parker's departure from the State.

Respondent conceded that, once retained, she failed to set forth the rate or basis of her fee in writing. Rather, she and J.D. had an oral agreement that respondent would be paid for legal fees after J.D.'s death, at which time respondent would serve as executor of J.D.'s estate. Although respondent kept billing records over the course of the representation, she never submitted invoices to J.D. for payment and, thus, fees accumulated from 1999 through April 2015.

Picut-Parker had given respondent copies of previously prepared documents, including a power of attorney, and a last will and testament that named a church in Italy as J.D.'s sole beneficiary. On December 31, 1999, J.D. executed a new general power of attorney naming respondent as her attorney-in-fact.

About seven years later, on November 22, 2007, J.D. executed a new will, naming respondent as executor and the Philharmonic-Symphony Society of New York, Inc., as her sole beneficiary.

On April 15, 2015, respondent and J.D. met to discuss the representation, after which respondent memorialized their meeting in a letter. J.D. believed that respondent should no longer wait to be paid for her work because she was devoting much more time to J.D.'s representation than either of them had anticipated. Under their new agreement, J.D. immediately gave respondent a \$15,000 retainer against past and future services. Respondent's billing rate for attorney fees was set at \$300 per hour, while non-attorney services were to be billed at an unspecified, reduced rate. Respondent stipulated that her failure to provide J.D. with a writing setting forth the basis or rate of her fees for attorney and non-attorney time violated RPC 1.5(b).

In April 2015, respondent used J.D.'s power of attorney to retain a contractor, Fazal Ray Mohamed, and his company, "Rite Temp," for construction and repairs to the house. Mohamed was selected because he was the husband of Tina Rodriguez, J.D.'s home health aide.

The initial contract called for the removal of asbestos-containing tiles in the kitchen. Respondent did not seek estimates from any other contractors before awarding the job to Mohamed. After the work was completed, respondent retained Mohamed during the period between April and October 2015 for subsequent alterations to the home's natural gas, plumbing, air conditioning, and heating systems. She failed to obtain estimates for each subsequent job. Respondent stipulated that she disbursed J.D.'s funds to Mohamed and Rite Temp "without any analysis or consideration of the reasonableness of the charges." All of the construction was completed with the appropriate township permits. Respondent used J.D.'s funds to pay Rite Temp a total of \$521,596.33 for repairs to the home.

James G. Webber, Esq., the grievant, represented J.D.'s nephew, who succeeded respondent as his aunt's temporary guardian. Apparently, Webber obtained bank records for J.D.'s bank accounts, analyzed them, and then contacted the Union County Prosecutor's Office

about respondent's handling of J.D.'s affairs. Prosecutors then opened a criminal investigation to review respondent's and Rite Temp's activities.

According to a May 9, 2016 letter to Webber from the Union County Prosecutor's Office, Webber was free to resume contacts with ethics authorities, because an ethics referral "will no longer impact our criminal investigation." Although the letter did not state that the investigation had been completed, no charges were filed against respondent in respect of her representation of J.D.

Webber also retained an architect, Kenneth J. Stoyak, AIA,PP, to analyze Rite Temp's charges. Stoyak's April 27, 2016 report concluded that the total work that Mohamed and Rite Temp performed on J.D.'s home had a construction value of \$103,726.

Respondent stipulated that she grossly neglected her duty to take "clear and obvious steps to ensure that J.D. received appropriate value for funds utilized for the home construction." Moreover, she failed "to take reasonable steps to ensure that J.D.'s funds were not dissipated by excessive and fraudulent billing by a third party [sic] contractor," violations of RPC 1.1(a).

On April 15 and October 19, 2015, respondent received a \$15,000 check and a \$3,500 check, respectively, for a total of \$18,500. Despite an allegation in the grievance that respondent received more than \$74,000 of J.D.'s funds, the \$18,500 in fees is the only amount that the stipulation attributes to respondent. The OAE found no financial misconduct by respondent, apart from recordkeeping infractions.

Aware that R. 1:21-6 required her to deposit the fees in her attorney business account, respondent deposited those two checks into her personal checking account. Respondent's attorney business account also contained an improper designation, which the stipulation does not explain further, in violation of RPC 1.15(d) and R. 1:21-6(a)(2). At the time of the stipulation, respondent was in the process of correcting the improper designation.

The parties agreed that an admonition would ordinarily suffice for the combination of ethics violations presented herein. In mitigation, respondent has no prior discipline in twenty-five years at the bar and cooperated fully with the OAE investigation. However, the parties agreed that two aggravating factors may warrant increased discipline: (1) \$417,870.33 in harm to the client (\$521,596.33 - \$103,726 = \$417,870.33); and (2) the "vulnerability of the elderly victim," for which the parties cited In re Torre, 223 N.J. 538 (2014).

In Torre, the Court announced its intention to treat harshly attorneys who take advantage of elderly clients. Torre convinced his unsophisticated elderly client to lend him about \$89,000, approximately seventy percent of her entire life savings, and failed to repay that short-term loan. The Court viewed Torre's "conduct against the backdrop of the serious and growing problem of elder abuse," noting that the "State's population is steadily aging,"

and that, as more seniors have sought "help to manage their affairs, allegations of physical and financial abuse have also increased." Id. at 547.

Like Torre, this case involves the taking advantage of an elderly, vulnerable client. Unlike Torre, however, there is no clear and convincing evidence that respondent took advantage of the client. Rather, it appears that respondent failed – through her own negligence – to identify the extent to which Mohamed and Rite Temp were overcharging her client for the work performed in her home. The Board concluded that, although respondent is far from blameless, her actions had been carefully reviewed by criminal and disciplinary prosecutors who were unable to conclude that she took advantage of an elderly client. Apparently, respondent was simply naïve in respect of construction costs and contracting for home repairs.

Ordinarily, an admonition would suffice for an attorney's gross neglect, failure to establish a legal fee in writing, and recordkeeping violations in a single client matter. See, e.g., In the Matter of Linda M. Smink, DRB 13-115 (October 23, 2013) (attorney failed to communicate in writing the basis or rate of the fee either to the client or his mother, who paid the fee, a violation of RPC 1.5(b); the attorney also failed to retain hard copies of client files at her office, a violation of RPC 1.15(d); failure to communicate with the client also found; no prior discipline in twenty-four years at the bar); In the Matter of Martin H. Kuner, DRB 13-113 (September 30, 2013) (attorney grossly neglected a matter by failing to serve a complaint, which was dismissed for lack of prosecution and/or failure to serve the summons and complaint, a violation of RPC 1.1(a); the attorney failed to enter into a written retainer agreement with the client in a personal injury matter, a violation of RPC 1.5(c), and failed to inform the client of the dismissal, a violation of RPC 1.4(b); in mitigation, the Board considered that the attorney had no prior discipline, that the client's case "fell through the cracks," and that the attorney was winding down his practice to change careers); and In the Matter of Carl C. Belgrave, DRB 05-258 (November 9, 2005) (attorney was retained to represent the buyer in a real estate transaction and failed to state in writing the basis of his fee, in violation of RPC 1.5(b); recordkeeping violations under RPC 1.15(d) and R. 1:21-6 also found).

In mitigation, respondent has an otherwise unblemished, twenty-five-year career at the bar and entered into a consent to discipline, thereby saving judicial resources.

In aggravation, the Board considered the substantial economic harm that respondent caused her client and determined that enhanced discipline of a reprimand is required.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated October 12, 2018.
2. Stipulation of discipline by consent, dated October 12, 2018.
3. Affidavit of consent, dated October 9, 2018.

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4. Ethics history, dated February 28, 2019.

Very truly yours,



Ellen A. Brodsky  
Chief Counsel

EAB/paa

encls.

- c: w/o enclosures  
Bonnie C. Frost, Chair  
Disciplinary Review Board (via e-mail)  
Charles Centinaro, Director  
Office of Attorney Ethics (via e-mail)  
Donald A. DiGioia, Respondent's Counsel (via e-mail)  
James G. Webber, Grievant (via regular mail)