

SUPREME COURT OF WISCONSIN
OFFICE OF LAWYER REGULATION

Public Reprimand With Consent

2012-OLR- 13

James G. Moldenhauer
Attorney at Law

In December 2007 a man, as personal representative of his uncle's estate, hired Moldenhauer to represent the estate in an informal probate proceeding.

On January 28, 2008, Moldenhauer filed the original Will, Application for Informal Probate and Proof of Heirship. On January 29, 2008, Moldenhauer filed the Notice to Interested Persons.

On May 6, 2008, Moldenhauer filed the Statement of Informal Administration, Domiciliary Letters, Consent to Serve, Affidavit of Mailing and Proof of Publication.

The Will was admitted to probate on May 6, 2008. On December 4, 2008 Moldenhauer filed the General Inventory. On February 6, 2009 notice of the estate being open more than 12 months was sent to Moldenhauer.

On or about May 5, 2009 Moldenhauer drafted a letter to the Register in Probate enclosing the estate Final Account, receipts and personal representative's Statement to Close. In his letter to the Register in Probate dated May 5, 2009 Moldenhauer stated, "Please notify my office if there is anything additional necessary for closing the estate."

Over a year later, on or about August 28, 2010, the client looked up the estate on Wisconsin Circuit Court Access ("WCCA") and discovered the estate was still open.

In an email to Moldenhauer on August 28, 2010 the client stated, "I looked at the status of the...Probate case. It shows it to be open. Can you please clarify why the case would be...open?" Moldenhauer did not respond.

In an email to Moldenhauer on September 16, 2010 the client asked Moldenhauer to provide an email reply that clarified the status of the estate. Moldenhauer did not respond.

Once informed by the client that the estate was still open, Moldenhauer stated he undertook to determine why the estate had not been closed. Moldenhauer's belief was that the estate documents had been filed and the estate was closed. According to Moldenhauer, this undertaking necessitated some time before he was able to respond to the client with some useful information regarding the status of the estate. Moldenhauer, however, did not acknowledge the client's inquiries or inform the client that he would provide an update after ascertaining case status.

Moldenhauer verified the estate had not been closed by checking on WCCA. Moldenhauer stated he communicated with the Register in Probate, but that did not provide any insight into why the estate was still open. After further investigation of this matter, Moldenhauer found an envelope behind the credenza in his office that was addressed to the Register in Probate, but never mailed. Moldenhauer stated he found the misplaced envelope a day or two before December 15, 2010 and it was sealed, properly addressed and stamped with postage. The envelope contained Moldenhauer's letter to the Register in Probate dated May 5, 2009, the estate Final Account, receipts and the personal representative's Statement to Close. Moldenhauer stated he subsequently shredded this envelope according to his office practice.

Moldenhauer stated he was under the mistaken belief that the letter to the Register in Probate dated May 5, 2009 was actually sent, the estate documents were filed and the estate was

closed. On December 15, 2010, Moldenhauer drafted a second letter to the Register in Probate, enclosing the same original estate documents for filing, and sent it to the Register in Probate to close the estate. On December 17, 2010, the estate was closed by the Probate Court.

Moldenhauer did not inform the client that the estate was closed until February 21, 2011. In a letter to the client dated February 21, 2011, Moldenhauer stated, "I would like to apologize to you for the delay in confirming that the...Estate has been closed by the Probate Court." Moldenhauer further stated, "I should have notified you that it was completed and the file was closed so you would have had that information."

By failing to acknowledge the client's inquiries of August 28, 2010 and September 16, 2010, even for the purpose of informing the client that he would ascertain the status of the estate and report back to the client, Attorney Moldenhauer violated SCR 20:1.4(a)(4), which states, "A lawyer shall...promptly comply with reasonable requests by the client for information." and SCR 20:1.3, which states, "A lawyer shall act with reasonable diligence and promptness in representing a client."

Having taken steps to close the estate in December 2010, and knowing that the client had made inquiries regarding case status as early as August 2010, by failing to inform the client of the closure of the estate until doing so in correspondence dated February 21, 2011, Attorney Moldenhauer violated SCR 20:1.4(a)(3), which states, "A lawyer shall...keep the client reasonably informed about the status of the matter."

Attorney Moldenhauer has prior discipline. In 1996, Attorney Moldenhauer received a private reprimand for violations of SCR 20:1.3, 20:1.4(a) and SCR 20:1.15(b) in a probate matter. In 2006, Attorney Moldenhauer received a public reprimand for violations of SCR 20:1.3 and 20:1.16(d) in one matter, a violation of SCR 20:1.16(d) in a second matter, and for

