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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

PAULA T. GRANUZZO  
DEPUTY CHIEF COUNSEL

MELISSA URBAN  
FIRST ASSISTANT COUNSEL

TIMOTHY M. ELLIS  
LILLIAN LEWIN

BARRY R. PETERSEN, JR.

COLIN T. TAMS

KATHRYN ANNE WINTERLE  
ASSISTANT COUNSEL

May 23, 2018

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

Re: **In the Matter of Robert Captain Leite**  
Docket No. DRB 18-074  
District Docket No. IV-2016-0017E

Dear Mr. Neary:

The Disciplinary Review Board reviewed the motion for discipline by consent (reprimand or such lesser discipline as the Board deems appropriate) filed by the District IV Ethics Committee (DEC), 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 reprimand is the appropriate discipline for respondent's violations of RPC 1.4(b), RPC 1.4(c), RPC 1.16(c) and RPC 1.16(d). The Board determined to dismiss the allegation that respondent violated R. 1:20-20(a) (prohibited association with a disbarred attorney in connection with the practice of law), because the stipulation charged no RPC violation to capture that unethical conduct.

Specifically, in February 2013, grievant Steven Sbaraglio and his wife, Antoinette, retained respondent to commence a civil action against their mortgage lenders, who had instructed them to purposely default on their mortgage debt to become eligible for a desired mortgage modification. Although the Sbaraglios followed that advice, they were unable to negotiate a satisfactory mortgage modification. Thus, respondent knew that

the Sbaraglios sought monetary damages to compensate them for the unforeseen damage that their credit ratings suffered as a result of the lender's detrimental advice.

In 2013, respondent filed a lawsuit against the mortgage lenders, alleging a "forced mortgage default" cause of action. Between November 2013 and March 2015, the Sbaraglios communicated often with Joe Scafidi, respondent's law clerk, a disbarred Pennsylvania attorney whom respondent had employed, despite full knowledge of his disbarment.

Around March 2015, the lenders' counsel filed a motion to dismiss an amended complaint that respondent had filed. Respondent filed no opposition to that motion. Consequently, the Sbaraglios' case was dismissed without prejudice. Respondent neither provided the Sbaraglios with a copy of the dismissal order nor notified them of the dismissal, claiming that, in March or April 2015, Mr. Sbaraglio had "effectively fired" him.<sup>1</sup>

Respondent further claimed that he had formally terminated the representation, in writing, and admitted that, as of May 2105, he had ceased all communication with the Sbaraglios. The Sbaraglios denied that they had fired respondent or had received any communication from him terminating the representation. Moreover, respondent failed to seek leave of the court to terminate the representation, failed to prepare or file a substitution of attorney, and failed to notify opposing counsel of his withdrawal from representation.

In September 2015, after the Sbaraglios' lenders served a foreclosure complaint on them, they sent respondent and Scafidi e-mails, informing them of the lenders' foreclosure action, and seeking information on the status of the lawsuit. Despite receiving both e-mails from the Sbaraglios, plus forwards of the same e-mails from Scafidi, respondent failed to reply to the Sbaraglios.

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<sup>1</sup> The stipulation does not include charges that respondent violated RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), or RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation – misrepresentation by silence) in respect of this misconduct. In the Board's view, however, that omission does not materially affect the appropriate quantum of discipline to be imposed in this matter.

The Sbaraglios ultimately retained new counsel, obtained a mortgage modification, and avoided foreclosure.

Typically, attorneys with no disciplinary history, who violate RPC 1.4(b), and RPC 1.16(d), even when accompanied by other, non-serious ethics infractions, receive admonitions. See e.g., In the Matter of William E. Wackowski, DRB 09-212 (November 25, 2009) (attorney permitted a complaint to be administratively dismissed, failed to inform his client of the dismissal, and failed to turn over the file to the client upon termination of the representation); In re Cameron, 196 N.J. 396 (2007) (attorney twice permitted a personal injury matter to be dismissed, failed to disclose the dismissals to the client, failed to return the client's telephone calls, and failed to turn the file over to successor counsel; in addition to RPC 1.3, RPC 1.4(b), and RPC 1.16(d), the attorney was deemed to have engaged in gross neglect, a violation of RPC 1.1(a)); and In the Matter of Vera Carpenter, DRB 97-303 (October 27, 1997) (in a personal injury matter, attorney failed to act diligently to advance the client's claim, failed to return the client's telephone calls, and failed to turn over the client's file to new counsel).

Few reported disciplinary cases address violations of RPC 1.16(c). In one such case, In re Saavedra, 162 N.J. 108 (1999), a three-month suspension was imposed. There, the attorney unilaterally withdrew from the representation of a minor in connection with a delinquency complaint. When the juvenile's family failed to pay Saavedra's fee, he left the courthouse without notifying the judge, who then rescheduled the matter. When the juvenile appeared before the judge in a different matter, another attorney informed the judge that Saavedra was no longer representing the juvenile. Because the trial date already had been set in the first matter, that attorney was directed to inform Saavedra that he could not unilaterally withdraw from the representation and was required to file a motion to be relieved as counsel. When Saavedra appeared later that day, the judge informed him that it was unlikely that such a motion would be granted at that late date.

Saavedra neither appeared for the rescheduled trial nor filed a timely motion to withdraw from the representation. The judge again adjourned the trial. The judge received Saavedra's

motion the day after the scheduled trial, denied it, and required Saavedra to appear at the rescheduled trial. Saavedra again failed to appear.

Saavedra was found guilty of having violated RPC 1.16(c), as well as RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), and RPC 8.4(d) (conduct prejudicial to the administration of justice). In imposing a three-month suspension, the Board considered the attorney's significant disciplinary record, which included a private reprimand, a reprimand, and a three-month suspension.

In In re Kern, 135 N.J. 463 (1994), after twenty-six days of a medical license hearing before the Office of Administrative Law (OAL), Kern moved to be relieved as counsel, on the ground that his clients had failed to pay fees and costs then due, in the amount of approximately \$85,000. The Administrative Law Judge (ALJ) was primarily concerned with the integrity of the administration process and with the clear prejudice that would result, if Kern were permitted to step away at that late stage of the proceedings. Anticipating that the complex administrative proceeding would likely continue for another twenty-five to fifty days, the ALJ denied the attorney's application. Following that determination, when Kern's several vigorous attempts to be relieved as counsel proved unsuccessful, he refused to appear when the administrative hearings resumed.

The Board found that, once the OAL issued an order, regardless of the grounds advanced by the attorney, "he had an absolute obligation" to continue to represent his client, absent a contrary order from a higher court or tribunal. Kern could not unilaterally terminate that representation.

In imposing a reprimand, the Board considered mitigating factors, including the attorney's unblemished disciplinary record and the fact that he found himself in difficult circumstances, "when he was forced to continue to represent individuals who engaged in a pattern of threats against him and who themselves recognized that such threats rendered effective representation extremely difficult." The Board also considered that, although misguided, the attorney's actions were the result of his sincere belief that it was ethically impermissible for him to continue his representation.

Here, as a final point of discussion, had the DEC charged an RPC (such as RPC 5.3(a)) to capture respondent's improper employment of Scafidi, a disbarred attorney, in violation of R. 1:20-20(a), the appropriate quantum of discipline in this case would remain a reprimand. Attorneys who have assisted suspended or disbarred lawyers in the practice of law - more egregious conduct than the facts of the case at bar - have received reprimands, despite having committed similar additional misconduct. See, e.g., In re Bevacqua, 174 N.J. 296 (2002); In re Ezon, 172 N.J. 235 (2002); and In re Belmont, 158 N.J. 183 (1999).

Respondent's misconduct was serious, and his lack of diligence, failure to communicate, and failure to protect the Sbaraglios' interests unnecessarily exposed them to the potential foreclosure of their home. He breached their trust and his professional obligation to pursue compensation for the damage that the lenders' reckless advice had caused to their credit ratings, unilaterally and improperly terminating the representation in a federal cause of action that he had personally crafted.

In mitigation, respondent has no prior discipline, his misconduct was partly due to his inexperience in litigation and the implicated areas of law, and he fully cooperated with the disciplinary proceedings by stipulating to his wrongdoing and consenting to discipline. Based on the above precedent and the absence of aggravation, the Board determined that respondent's misconduct warrants a reprimand.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated January 23, 2018;
2. Stipulation of discipline by consent, dated February 2, 2018;
3. Affidavit of consent, dated January 11, 2018; and

May 23, 2018

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4. Ethics history, dated May 23, 2018.

Very truly yours,



Ellen A. Brodsky  
Chief Counsel

Encls.

c: (w/o enclosures)  
Bonnie C. Frost, Chair  
Disciplinary Review Board (e-mail)  
Charles Centinaro, Director  
Office of Attorney Ethics (e-mail)  
Jennifer B. Stewart, Presenter,  
District IV Ethics Committee (e-mail)  
Christopher L. Soriano, Chair  
District IV Ethics Committee (e-mail)  
John M. Palm, Secretary  
District IV Ethics Committee (e-mail and regular mail)  
Daniel Q. Harrington, Vice-Chair  
District IV Ethics Committee (e-mail)  
Isabel K. McGinty, Statewide Ethics Coordinator  
Office of Attorney Ethics (e-mail)  
Gary D. Nissenbaum, Respondent's Counsel (e-mail and  
regular mail)  
Steven Sbaraglio, Grievant (regular mail)