DISCIPLINARY REVIEW BOARD

OF THE

SUPREME COURT OF NEW JERSEY

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

January 23, 2024

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

Re: **In the Matter of Leah E. Capece**
Docket No. DRB 23-247
District Docket Nos. XIV-2021-0237E
and XII-2023-0903E

Dear Ms. Baker:

The Disciplinary Review Board has reviewed the motion for discipline by consent (censure or such lesser discipline as the Board deems appropriate) filed by the Office of Attorney Ethics (the OAE) in the above matter, pursuant to R. 1:20-10(b). Following a review of the record, the Board granted the motion and determined that a censure is the appropriate quantum of discipline for respondent's violation of RPC 5.5(a)(2) (assisting another in the unauthorized practice of law). The Board determined to dismiss, however, the charged violation of RPC 5.3(a) (failing to ensure that the conduct of a nonlawyer employed by the attorney is compatible with the attorney's professional obligations).

The stipulated facts are as follows. In 2011, respondent retained Litigation Support Services, Inc. (LSS) to assist her with a personal legal matter against a

former partner. LSS was a division of LDZ Litigation Services, Inc., and both companies were run by Leonard T. Bzura, a former New Jersey attorney who was disbarred by the Court, effective October 5, 1995, following his criminal conviction for theft by deception, misapplication of entrusted property, and related crimes. In re Bzura, 142 N.J. 478 (1995). Bzura was the President and CEO of LSS.[1] Through LSS, Bzura offered legal support services exclusively to lawyers, and not to the public.

When respondent retained LSS, Bzura informed her that he had been disbarred. However, Bzura told respondent that there was no issue with her retaining him to assist her with legal matters, so long as they did not share office space, he did not directly represent clients or appear in court, and he worked on a per diem basis. Respondent did not directly employ Bzura but, rather, retained LSS to serve as a consultant to provide legal research and writing; draft pleadings and other legal forms; organize and index discovery materials; and serve process. Although Bzura did attend client meetings "on rare occasion," he was present for the "sole purpose of taking notes" and did not offer advice or information directly to any of respondent's clients.

Respondent, thus, treated LSS as a vendor and incorrectly believed the business relationship between her law practice and LSS was permissible under the Court Rules. However, she admittedly failed to conduct any independent research to determine if retaining a legal services business run by a disbarred attorney, whether for personal or client matters, violated any Court Rules.

Between 2011 and 2012, Bzura assisted respondent with her personal legal matter. Bzura was respondent's only point of contact for LSS in connection with work performed on that matter. However, in addition to her personal legal matter, respondent began to utilize the services of LSS for her client matters and, occasionally, service of process. Respondent did not recall the exact number of cases for which LSS provided services for her clients since 2011.[2]

---

[1] Although the LSS billing statements reflect the names "Leonard T. Bzura, President/CEO" and "Leonard B. Thomas, President/CEO," it is presumed that the two names represent the same person.

[2] Respondent no longer had access to any client files for periods prior to 2015 and, therefore, did not provide any records related to the work Bzura performed prior to 2015. Respondent destroyed all files dating back to 2015 and before, as the record retention obligations of R. 1:21-6(c)(1) allow.

However, respondent admitted that Bzura assisted her with two client matters in 2015, and the documents obtained by the OAE during its investigation demonstrated that Bzura assisted respondent with at least four client matters, between 2018 and 2020.

During that period, LSS maintained a separate office, did not have access to respondent's office or client files, and did not have any direct contact with her clients. Bzura provided all advice directly to respondent and, according to the stipulation, the parties agreed that Bzura "did not perform work customarily performed by an attorney." Bzura reported to respondent, and she reviewed, edited, and completed all work prepared by LSS. Bzura did not submit any of the work he prepared for respondent directly to courts or to clients. Respondent considered Bzura to be a "valuable asset to [her] practice," citing his "knowledge and experience [which] allowed him to accomplish many tasks . . . efficiently . . . such as . . . legal research and organization of discovery materials, all the while demonstrating a mastery of legal doctrine and court procedure."

On May 25, 2021, the OAE received a referral from New Jersey's Committee on the Unauthorized Practice of Law, which alleged that respondent had retained LSS in violation of R. 1:20-20(a). In connection with the referral, the OAE received LSS billing statements for the matters of Mazza v. Rica and In the Matter of the Estate of Rica.

The billing statements reflected the legal support services that Bzura provided to respondent, through LSS, between November 2018 and May 2020, in the above-referenced matters. Those legal services included: (1) conducting legal research; (2) drafting pleadings, motions, and certifications; (3) preparing discovery demands; (4) indexing discovery responses; (5) reviewing documents and files; and (6) attending respondent's client meetings. The billing statements illustrated that Bzura provided at least 43 hours of legal services on the matters of Mazza v. Rica and In the Matter of the Estate of Rica.

In her reply to the initial grievance in this matter, respondent provided the OAE with additional billing statements for the matters of Zenith Services Inc., v. Krishna Nallamothu, et al. and Gulf Harbour Investments Corporation v. DePascale et al. The legal services Bzura provided in those matters included: (1) conducting legal research; (2) drafting letter opinions on issues; (3) reviewing appellate filings; (4) reviewing trial filings; (5) exchanging e-mails

with counsel; and (6) participating in telephone conferences with counsel. The billing statements demonstrated that Bzura provided at least 11.25 hours of legal services in those matters.

The billing statements additionally reflected that Bzura billed respondent $100 per hour for the work performed in the matters of Mazza v. Rica and Estate of Rica and $175 per hour for the work performed in the matters of Zenith and Gulf Harbour. Respondent paid at least $5,178 directly to LSS for the legal services provided by Bzura for the identified matters.[3] Those payments were made via checks issued from respondent's attorney business account.

Respondent conceded that, by retaining LSS to provide legal services, she assisted Bzura, a disbarred attorney, in his unauthorized practice of law, in violation of the Court's Order of disbarment and R. 1:20-20(a).

Based on the above facts, the parties stipulated that respondent violated RPC 5.3(a) and RPC 5.5(a)(2).

Following a review of the record, the Board determined to grant the motion for discipline by consent and found that the stipulated facts clearly and convincingly support respondent's admission that she violated RPC 5.5(a)(2) by improperly assisting a disbarred attorney in the unauthorized practice of law.

Specifically, respondent violated RPC 5.5(a)(2) by retaining LSS and Bzura to furnish various legal services to her in connection with her law practice. Bzura admittedly prepared legal documents and provided respondent with legal advice and written opinions regarding specific legal issues, including, ultimately, in connection with her client matters. Although respondent stated she did not employ Bzura to act in the capacity of an attorney, she acknowledged that she valued Bzura's "knowledge and experience," and appreciated his "mastery of legal doctrine." It is evident from both respondent's admissions to the OAE and the billing statements that respondent retained Bzura to provide legal services and further utilized Bzura's expertise as a former attorney. Respondent, thus, improperly assisted Bzura in the unauthorized practice of law despite being aware, at the time she retained the services of LSS, that Bzura was

[3] Although respondent stated that she also hired Bzura to perform service of process, the billing statements in the record did not reflect any such charges.

a disbarred attorney. Consequently, she violated RPC 5.5(a)(2).

However, the Board determined to dismiss the charge that respondent additionally violated RPC 5.3(a). In particular, the Board determined that respondent's misconduct is adequately addressed by the RPC 5.5(a)(2) charge. There is no per se violation of RPC 5.3(a) as a result of respondent's violation of RPC 5.5(a)(2) and, given the facts of this case, applying that Rule would simply be duplicative. Moreover, disciplinary precedent applying RPC 5.3(a) typically addresses an attorney's failure to supervise their direct-report staff. See, e.g., In the Matter of Vincent S. Verdiramo, DRB 19-55 (January 21, 2020) (admonition; due to the attorney's abdication of his recordkeeping obligations, his nonlawyer assistant was able to steal more than $149,000 from his trust account; mitigating factors were the attorney's prompt actions to report the theft to affected clients, law enforcement, and disciplinary authorities; his deposit of $55,000 in personal funds to replenish the account; his extensive remedial actions; his acceptance of responsibility for his misconduct; and his unblemished, thirty-three year career); In re Bardis, 210 N.J. 253 (2012) (admonition; due to the attorney's failure to review and reconcile his attorney records, his bookkeeper was able to steal $142,000 from his trust account, causing a shortage of $94,000; mitigating factors were the attorney's deposit of personal funds to replenish the account; numerous other corrective actions; his acceptance of responsibility for his misconduct; his deep remorse and humiliation for not having personally handled his own financial affairs; and his lack of a disciplinary record); In re Deitch, 209 N.J. 423 (2012) (reprimand; due to the attorney's failure to supervise his paralegal-wife and his poor recordkeeping practices, $14,000 in client or third-party funds were invaded; the paralegal-wife stole the funds by negotiating thirty-eight checks issued to her by forging the attorney's signature or using a signature stamp; no prior discipline); In re Murray, 185 N.J. 340 (2005) (attorney reprimanded for failure to supervise nonlawyer employees, which led to the unexplained misuse of client trust funds and to negligent misappropriation; the attorney also committed recordkeeping violations).

Although there are numerous cases in which attorneys have assisted nonlawyers in the unauthorized practice of law, there are relatively few in which lawyers have assisted suspended or disbarred lawyers. See, e.g., In re Tran, 246 N.J. 155 (2021) (motion for reciprocal discipline; three-month suspension for attorney who assisted her former employer, a suspended attorney, in the

unauthorized practice of law, for approximately one month; the attorney described that time as chaotic and stressful as she had recently learned of the partner's suspension; was the only attorney in good standing remaining at the firm; and wanted to ensure firm clients did not suffer; no prior discipline); In re Pinkas, 253 N.J. 227 (2023) (motion for reciprocal discipline; six-month suspension for an attorney who assisted a suspended attorney in the unauthorized practice of law (RPC 5.5(a)(1)) for nearly two-and-a-half years; the attorney hired the suspended attorney to work as a paralegal in his law firm; the attorney also used the suspended attorney's legal advice concerning firm matters, permitted him to tailor legal documents, allowed him to communicate with outside parties regarding firm matters, and permitted his continued use of an e-mail address that falsely represented that he was an attorney with his own firm; the attorney and his firm derived a financial benefit through the introduction of approximately 100 to 120 clients, yielding seven percent of the firm's revenue; the attorney also failed to report the suspended attorney's unauthorized practice of law to disciplinary authorities, in violation of RPC 8.3(a); no prior discipline in nearly seventeen years at the bar); In re Martin, 226 N.J. 588 (2016) (motion for reciprocal discipline; six-month suspension for assisting a suspended attorney in the unauthorized practice of law while purporting to be the attorney of record; the attorney also knowingly disobeyed a court order, failed to supervise a nonlawyer employee, and shared fees with the suspended attorney); In re Kronegold, 197 N.J. 22 (2008); In re Hancock, 221 N.J. 259 (2015) (companion cases) (motions for reciprocal discipline; six-month suspensions for attorneys who assisted a disbarred attorney in the unauthorized practice of law; the clients "hired" the disbarred attorney, who paid Hancock and Kronegold to provide legal services; in one matter, Hancock appeared for oral argument, at the disbarred attorney's request, and made a misrepresentation to the court, claiming he was representing the client pro bono; the disbarred attorney then prepared and filed a brief with the appellate court, using Kronegold's name and purported signature; in another matter, Hancock failed to supervise the disbarred attorney, allowing him, as a "paralegal" in his firm, to conduct bankruptcy proceedings under Hancock's name; Hancock also made misrepresentations to the bankruptcy court regarding the disbarred attorney's role in the proceedings; in mitigation, the Board considered the passage of time (ten to twelve years) since the misconduct and Hancock's unblemished disciplinary record since his 1979 admission; Kronegold signed a notice of appeal for the client, at the disbarred attorney's request; the disbarred attorney then prepared and filed a brief with the appellate court, using

Kronegold's name and purported signature; Kronegold also failed to set forth in writing the rate or basis of his fee); In re Cermack, 174 N.J. 560 (2003) (attorney consented to a six-month suspension after he entered into an agreement to permit a suspended lawyer to continue to represent his own clients while the attorney was the named attorney of record and made court appearances; the attorney also displayed a lack of diligence, failed to keep clients reasonably informed about the status of their matters, failed to explain matters to the extent reasonably necessary to permit clients to make informed decisions, failed to comply with recordkeeping requirements, failed to protect his clients' interests on termination of the representation, knowingly assisted another to violate the Rules of Professional Conduct, and engaged in conduct prejudicial to the administration of justice; no prior discipline).

Here, respondent's misconduct bears resemblance to that of the attorney in Tran, who received a three-month suspension. Like Tran, respondent admitted to knowingly assisting a disbarred attorney in the unauthorized practice of law, knowing when she retained LSS to provide legal services that Bzura had been disbarred. Despite that knowledge, respondent failed to report Bzura's unauthorized practice to the authorities and, worse, proceeded to utilize Bzura's expertise as a former attorney in her legal practice.

Respondent's misconduct, however, was not as severe as the attorneys who received lengthier, six-month suspensions, including Pinkas, Martin, Hancock, Kronegold, Cermack. Unlike the attorneys in those matters, respondent did not make any misrepresentations to clients, adversaries, or courts regarding Bzura. She also made efforts to ensure Bzura did not directly represent her clients or permit Bzura to appear in court on behalf of her clients.

Thus, based upon the foregoing disciplinary precedent, and Tran in particular, the Board concluded that the baseline level of discipline for respondent's misconduct is a three-month suspension. In crafting the appropriate discipline, the Board also considered aggravating and mitigating factors.

In aggravation, respondent's prolonged misconduct spanned nearly a decade, beginning in 2011 when she engaged Bzura's legal services and continued, albeit sporadically, until 2020.

In mitigation, respondent has no prior discipline in her twelve-year career. In re Grimes, __ N.J. __ (2022), 2022 N.J. LEXIS 1165 (according significant weight to the attorney's unblemished disciplinary history of more than thirty years at the bar). Further, she cooperated with the OAE's investigation; admitted her wrongdoing; expressed remorse; and entered into a disciplinary stipulation, thereby accepting responsibility for her misconduct, and conserving disciplinary resources. Last, in June 2023, she retired from the practice of law in New Jersey and relocated to Arizona, where she does not practice law.

On balance, the Board determined that the mitigating factors were sufficiently compelling to warrant a decrease from the three-month baseline quantum of discipline in this case. Thus, the Board determined that a censure is the appropriate quantum of discipline necessary to protect the public and preserve confidence in the bar.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated November 16, 2023 (confidential and redacted).

2. Stipulation of discipline by consent, dated November 14, 2023 (confidential and redacted).

3. Exhibit 4 to Stipulation of discipline by consent (confidential).

4. Affidavit of consent, dated November 3, 2023.

5. Ethics history, dated January 23, 2024.

Very truly yours,

/s/ Timothy M. Ellis

Timothy M. Ellis
Chief Counsel

TME/trj
Enclosures
c: See attached list.

(w/o enclosures)
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.), Chair
Disciplinary Review Board (e-mail)
Johanna Barba Jones, Director
Office of Attorney Ethics (e-mail and interoffice mail)
Amanda W. Figland, Deputy Ethics Counsel
Office of Attorney Ethics (e-mail)
Leah E. Capece, Respondent (e-mail and regular mail)