

New Hampshire Supreme Court  
**Professional Conduct Committee**

*a committee of the attorney discipline system*

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*In the Matter of Julian H. Lebeck, Esquire – LD-2016-0008*

**PUBLIC CENSURE**

In accordance with Supreme Court Rule 37(12), on June 10, 2016, the New Hampshire Supreme Court ruled that the above-captioned reciprocal discipline matter from the Massachusetts Board of Bar Overseers of the Supreme Judicial Court (“the Board”) warrants the issuance of a public censure. The Court remanded the matter to the Professional Conduct Committee for the issuance of a public censure.

**I. FACTS**

The matter arises from Mr. Lebeck’s representation of clients in two immigration cases.

Case 1

Mr. Lebeck was hired to represent a client who had entered the United States as a minor and was a lawful permanent resident. The client had been apprehended and placed in removal proceedings in another state after a misdemeanor conviction. The client’s parents had lived apart but were not legally separated, and only his father was a naturalized citizen. The client had mistakenly believed that he was a citizen. Mr. Lebeck secured the client’s release on bond and had the case transferred to Immigration Court in Boston.

The client’s hearing was set for February 2012. In prehearing briefs, Mr. Lebeck erroneously asserted that the client was eligible for derivative citizenship through the father’s naturalization. Derivative eligibility would have been available only if the parents both had been

naturalized or were legally separated. In addition, Mr. Lebeck asserted the client's eligibility for discretionary relief through cancellation of removal. Mr. Lebeck submitted a required application for this relief but failed to include the filing fee, and the application was not accepted for filing. Mr. Lebeck received notice that the application was not on file but failed to take timely corrective action.

At the hearing, the court ruled that the client's application for cancellation of removal had been abandoned for failure to file the required application and entered a removal order. The court indicated that a motion to reopen would be entertained upon payment of the filing fee. Mr. Lebeck paid the fee and the proceedings reopened.

The client's second hearing took place in September 2014. Mr. Lebeck failed to verify before the hearing that the client had obtained updated biometrics as required, and the application for cancellation was dismissed for that reason. The court again ordered the client's removal.

The client subsequently discharged Mr. Lebeck and hired another attorney who moved to stay and reopen the proceedings based on the assertions of ineffective assistance by Mr. Lebeck. The motions were granted in late 2014 and the proceedings reopened for hearing on the merits.

## Case 2

In 2011, a naturalized citizen consulted Mr. Lebeck about obtaining immigrant visas for two of the client's grown children still living in his birth country. The client had filed alien relative petitions for the children some years earlier, but the petitions had not been acted on. Mr. Lebeck agreed to investigate the status of the petitions, correct any deficiencies, and pursue approval of the petitions for a flat fee of \$2,500. The client paid the fee.

In August 2011, Mr. Lebeck sent a request to the Customs and Immigration Service for copies of records, but he did not include required releases by the client, and the request was denied. Mr. Lebeck submitted new requests with releases in November 2011. Thereafter he had periodic communications with the client but took no further action of substance to advance the petitions. By 2014, the representation had been effectively terminated. The client hired new counsel who reopened and successfully pursued the petitions.

Mr. Lebeck had not earned the entire fee paid by the client but failed to make a prompt refund. At Bar Counsel's request he provided a breakdown of his time and charges at \$250 per hour, most of which were for emails and text messages in fifteen-minute increments. Those charges were clearly excessive.

The matter went before the Board on a stipulation of the parties waiving hearing and requesting that the matter be resolved by the imposition of a public reprimand. On March 7, 2016, the Board voted to accept the stipulation of the parties and their joint recommendation. On April 7, 2016, the Board publicly reprimanded Mr. Lebeck.

Mr. Lebeck was admitted to the Massachusetts Bar in 2004 and had no history of discipline. In mitigation in the second case, the respondent later made a fee refund to the client.

## II. RULINGS OF LAW

Mr. Lebeck failed to represent the clients competently and diligently in violation of Massachusetts Rule of Professional Conduct 1.1 and 1.3. Mr. Lebeck's conduct in charging and collecting a clearly excessive fee in the second case violated Massachusetts Rule of Professional Conduct 1.5(a), and his failure promptly to refund the unearned portion violated Massachusetts Rule of Professional Conduct 1.16(d) as then in effect.

## III. SANCTION

The Professional Conduct Committee deliberated the matter on May 17, 2016, and recommended to the Court that for purposes of reciprocal discipline, a sanction of public censure is the equivalent to a public reprimand imposed by the Commonwealth of Massachusetts Supreme Judicial Court. The Court concluded that a public censure is warranted, and the Committee hereby issues a Public Censure.

## IV. COSTS

Mr. Lebeck shall be responsible for the expenses incurred by the Committee in the investigation and enforcement of this disciplinary matter. *See* Sup. Ct. R. 37(19)(b). Costs can include, but are not limited to, copying and costs associated with the publication of the censure. The assessment of costs shall become final unless Mr. Lebeck responds in writing, within thirty (30) days of receipt of the Committee's statement of expenses, listing each disputed expense and explaining the reasons for disagreement. Sup. Ct. R. 37(19)(b). The Committee may resolve the disagreement, or enforce the assessment of costs by petition to the superior court in any county in the state. Sup. Ct. R. 37(19)(b).

The Committee may file a copy of the final assessment of costs with the superior court in any county in the state, where it shall be docketed as a final judgment and shall be subject to all legally-available post-judgment enforcement remedies and procedures. *See* Sup. Ct. R. 37(19)(c). Mr. Lebeck shall be responsible for any costs incurred as a result of the Attorney Discipline Office's collection efforts.

June 16, 2016

  
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David M. Rothstein, Chair

### Distribution:

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