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SUPREME COURT OF NEW JERSEY

DISTRICT VC ETHICS COMMITTEE,
 ESSEX COUNTY – WEST,

Complainant,

v.

DWAYNE D. WARREN, ESQ.,

Respondent.

DISTRICT VC ETHICS COMMITTEE
 ESSEX COUNTY – WEST
 DOCKET NO.: VC-2015-0014E

Disciplinary Action

COMPLAINT

District VC Ethics Committee, Essex County – West, by way of Complaint against
 Dwayne D. Warren (“Respondent”) says:

GENERAL ALLEGATIONS

1. Respondent was admitted to the Bar of this State on May 5, 1992.
2. Respondent maintains law offices at 444 Berkeley Avenue, Orange, New Jersey 07050.
3. On July 7, 2010, Sharon Berry (“Berry”), retained Respondent for purposes of preventing foreclosure of her home as she had been served with a foreclosure notice.
4. Berry asked Respondent for a written retainer agreement but was never provided one.

5. Berry paid Respondent \$3,000.00 upfront of which \$500.00 was to be for legal services to be provided by Respondent's assistant.

6. Berry never received any billing records from Respondent.

7. Respondent was to file an expedited motion arguing that the foreclosure notice was not effective, or in the alternative, that there was a loan modification, which was breached by way of the foreclosure notice.

8. Respondent failed to file the motion, and a final judgment of foreclosure was entered on December 24, 2007.

9. Nearly two years later, Respondent transferred the matter to another attorney without first discussing this with or getting authorization from Berry. Respondent later notified Berry that she would need to pay an additional \$2,500.00 to that new attorney.

10. On or about October 22, 2012, Berry submitted to the New Jersey Judiciary an Attorney Fee Arbitration Request Form.

11. A District Fee Arbitration Committee was assigned to the matter under Docket number VIII-2014-0506F ("Arbitration Committee").

12. Respondent was notified of the arbitration but failed to file an Attorney Response and the \$50.00 filing fee.

13. As a result, on October 16, 2013, Respondent was notified by regular and certified mail that he was barred from further participation in the arbitration.

14. Respondent retained Robert Pickett, Esq. ("Pickett") to represent him before the Arbitration Committee.

15. Pickett advised the Arbitration Committee that the matter would be settled, and a Stipulation of Settlement was forwarded to Pickett.

16. By November 6, 2013, no settlement had been reached, and a hearing was scheduled.

17. Prior to commencement of the hearing, Respondent represented to the hearing panel chair that the matter was settling and that he would forward a Stipulation of Settlement to the panel chair.

18. Berry appeared at the appointed time for the hearing and testified under oath that she had not agreed to a settlement and that she had signed nothing.

19. The Arbitration Committee conducted a hearing on February 24, 2014 at the Middlesex County Courthouse in New Brunswick, New Jersey, whereby Berry testified under oath.

20. The Arbitration Committee ordered that Respondent must repay \$3,000.00 to Berry within thirty days.

21. Thirty days passed and Respondent had yet to repay Berry.

22. The Arbitration Committee also made conclusions of fact, including that Respondent never offered or provided Grievant a written retainer agreement, billing records and/or evidence that any legal services were performed on her behalf.

23. The Arbitration Committee also found that Respondent misrepresented to the panel chair (on the day of the arbitration hearing) that the matter was settled, when Berry had not entered into a stipulation of settlement agreement.

24. The Arbitration Committee referred the matter to the Director of the Office of Attorney Ethics because Respondent: (i) failed to provide a written retainer agreement to Berry; (ii) retained all payments she made to him without performing the agreed upon legal services; and, (iii) transferred the matter to another attorney without Berry's knowledge or permission,

causing Berry to possibly incur the same retainer with new counsel without having received a refund for no services rendered from Respondent.

25. On August 19, 2015, Respondent was sent notice by certified mail, return receipt requested that an ethics grievance had been filed against him.

26. A signed returned receipt of delivery to Respondent was received, but the Respondent failed to submit any communications whatsoever.

27. Berry was eventually repaid the \$3,000.00 but only after repeated requests to Respondent following the arbitration.

COUNT ONE

(Violation of RPC 1.1(a) and (b) – Gross Negligence and Negligence)

28. The above Paragraphs are hereby incorporated by reference as if fully set forth herein.

29. Berry paid Respondent \$3,000.00 to handle a foreclosure matter.

30. Respondent failed to perform the legal services for which he was retained.

31. Respondent failed to keep Berry informed of the status of the matter.

32. Respondent failed to provide Berry with a list of fees/billing records even though she requested them.

33. Respondent's conduct constitutes gross negligence and/or negligence in violation of RPC 1.1(a) and (b)

COUNT TWO

(Violation of RPC 1.3 - Diligence)

34. The above Paragraphs are hereby incorporated by reference as if fully set forth herein.

35. Respondent failed to perform the legal services for which he was retained by Berry.

36. Respondent may have drafted a Complaint but he never filed it, and Berry's home was foreclosed upon.

37. Respondent failed to keep Berry informed of the status of the matter.

38. Respondent eventually repaid Berry the \$3,000.00 she paid for legal services but only after repeated requests and arbitration.

39. Respondent's conduct constitutes a lack of diligence in violation of RPC 1.3.

COUNT THREE
(Violation of RPC 1.4 - Communication)

40. The above Paragraphs are hereby incorporated by reference as if fully set forth herein.

41. Respondent failed to keep Berry informed of the status of the matter.

42. Respondent failed to provide Berry with a copy of billing and fees upon Berry's request.

43. Respondent transferred the matter to another attorney without telling Berry and/or obtaining Berry's authorization.

44. Respondent's conduct constitutes failure to communication with the client in violation of RPC 1.4.

COUNT FOUR
(Violation of RPC 1.5(b) – No Retainer)

45. The above Paragraphs are hereby incorporated by reference as if fully set forth herein.

46. Respondent failed to provide Berry with a retainer agreement at any time during his representation of Berry.

47. Respondent failed to provide Berry with billing records even when requested.

48. Respondent's conduct constitutes violation of RPC 1.5(b).

COUNT FIVE
(Violation of RPC 1.6 – Confidentiality)

49. The above Paragraphs are hereby incorporated by reference as if fully set forth herein.

50. Respondent transferred Berry's file to another attorney without telling Berry and/or obtaining authorization.

51. Respondent's conduct revealed his client's information without her consent.

52. Respondent's conduct constitutes a violation of RPC 1.6.

COUNT SIX
**(Violation of RPC 8.1(b), Rule 1:20-3(g)(3) –
Failure To Cooperate With Disciplinary Proceeding)**

53. The above Paragraphs are hereby incorporated by reference as if fully set forth herein.

54. Respondent was notified of the arbitration but failed to file an Attorney Response and the \$50.00 filing fee.

55. On August 19, 2015, Respondent was sent notice by certified mail, return receipt requested that an ethics grievance had been filed against him.

56. Respondent failed to submit any communications whatsoever.

57. Respondent knowingly failed to respond to a lawful demand for information from two disciplinary authorities.

58. Respondent's conduct constitutes a violation of RPC 8.1(b) and New Jersey Rule of Court 1:20-3(g)(3).

COUNT SEVEN
(Violation of RPC 8.2 – Knowing False Statement)

59. The above Paragraphs are hereby incorporated by reference as if fully set forth herein.

60. Prior to commencement of the arbitration hearing, Respondent falsely represented to the hearing panel chair that the matter was settling and that he would forward a Stipulation of Settlement to the panel chair.

61. Respondent's conduct constitutes a violation of RPC 8.2.

COUNT EIGHT
(Violation of RPC 8.4(c) – Dishonesty/Misrepresentation)

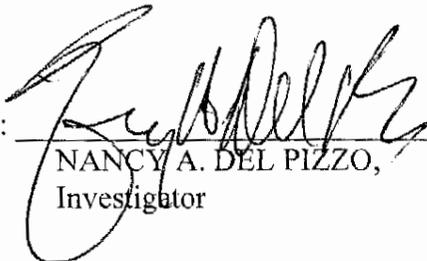
62. The above Paragraphs are hereby incorporated by reference as if fully set forth herein.

63. Prior to commencement of the arbitration hearing, Respondent falsely represented to the hearing panel chair that the matter was settling and that he would forward a Stipulation of Settlement to the panel chair.

64. Respondent's conduct constitutes a violation of RPC 8.4(c).

WHEREFORE, Respondent should be disciplined.

Dated: May 10 2016

By: 
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Investigator

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SUPREME COURT OF NEW JERSEY

DISTRICT V-C ETHICS COMMITTEE,
ESSEX COUNTY - WEST ESSEX,

Complainant,

v.

DWAYNE D. WARREN, ESQ.,

Respondent.

DISTRICT V-C ETHICS COMMITTEE
ESSEX COUNTY - WEST ESSEX

Docket No. VC-2015-0014E

Disciplinary Action

**ANSWER AND
SEPARATE AFFIRMATIVE DEFENSES**

Respondent Dwayne D. Warren, Esq. ("Warren"), through his attorneys Mizrahi Warren LLP, hereby states by way of Answer to the Complaint by the District V-C Ethics Committee, Essex County - West Essex ("Committee"), as follows:

GENERAL ALLEGATIONS

1. Warren admits the allegations set forth in Paragraph 1 of the Complaint.

2. Warren denies the allegations set forth in Paragraph 2 of the Complaint. By way of further response, Warren states that his law office is located at 523 Park Avenue, Third Floor, Orange, New Jersey, 07050. (See Warren Certif. at ¶4.)

3. Warren admits the allegations set forth in Paragraph 3 of the Complaint insofar as Grievant Sharon Berry ("Berry") retained his services in or around July, 2010; however, Warren denies the remaining allegations set forth in Paragraph 3 of the Complaint. By way of further response, Warren states that Berry did not retain his services for the purposes of preventing a foreclosure on her home since, at that time, a Final Judgment of Foreclosure had already been entered against Berry in the underlying foreclosure

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litigation ("Foreclosure Litigation")¹ and Berry's home had already reverted to the lender, Deutsche Bank National Trust Co., as Trustee for FFMLT 2006-FF13 ("Deutsche Bank"), through a Sheriff's Sale². (See *Warren Certif.* at ¶¶6-8.) Rather, Berry retained Warren to file a Motion to Vacate the Final Judgment of Foreclosure ("Motion to Vacate") based upon Berry's contention that she had not been properly served with the complaint in the Foreclosure Litigation. (*Id.* at ¶15.)

4. Warren admits the allegations set forth in Paragraph 4 of the Complaint insofar as Berry requested a written retainer agreement. Warren denies the remaining allegations set forth in Paragraph 4 of the Complaint. By way of further response, Warren states that a written retainer letter was provided to Berry. (See *Warren Certif.* at ¶12.) Warren also states that prior to 2010, Warren had an established relationship with represented Berry in a number of personal and business matters. (*Id.* at ¶15.)

5. Warren admits the allegations set forth in Paragraph 5 of the Complaint insofar as Berry paid an upfront fee of \$3,000 for Warren to file the Motion to Vacate. Warren denies the remaining allegations set forth in Paragraph 5 of the Complaint. By way of further response, Warren states that the upfront fee paid by Berry was not apportioned in any manner. (See *Warren Certif.* at ¶¶10-12.)

6. Warren admits the allegations set forth in Paragraph 6 of the Complaint. By way of further response, however, Warren states that the fee paid by Berry was a flat fee for filing the Motion to Vacate, and that despite his offer to provide Berry with an itemization and explanation of the work performed on her behalf, Berry refused same. (See *Warren Certif.* at ¶29.)

7. Warren admits the allegations set forth in Paragraph 7 of the Complaint insofar as he was retained to file a motion on Berry's behalf in the Foreclosure Litigation (i.e., the Motion to Vacate). Warren denies the remaining allegations set forth in Paragraph 7 of the Complaint. By way of further response, Warren states that the Motion to Vacate was not being filed on an emergent basis, and the basis for the Motion to Vacate was Berry's contention that she was not served with the complaint in the Foreclosure Litigation. (See *Warren Certif.* at ¶¶6, 14.) During Warren's review of the Foreclosure Litigation, he

¹ Warren did not represent Berry in the Foreclosure Litigation, which was captioned as *Deutsche Bank Nat'l Trust Co., as Tr. for FFMLT 2006-FF13 v. Sharon Berry*, under Statewide Docket No. F-018367-07. The Final Judgment of Foreclosure in that matter was entered on or about December 24, 2007. (See *Warren Certif.* at ¶7.)

² A Sheriff's Sale on Berry's home was initially scheduled for December 10, 2008, but was thereafter adjourned 3 times at Berry's request. Ultimately, the Sheriff's Sale was held on July 22, 2009, at which time the property reverted to the lender. (See *Warren Certif.* at ¶18.)

discovered that Berry had been properly served with the Foreclosure Complaint. After confronting Berry with this fact and advising her that he could not file the Motion to Vacate since he now knew that she had been served with the Foreclosure Complaint, Berry insisted that Warren shift course and file a motion to rescind the Sheriff's Sale based upon her claim that she had been granted a loan modification by Deutsche Bank's servicer, America's Servicing Company ("ASC"). (*Id.* at ¶¶16-18.) Berry further advised that she had begun working with a for-profit loan modification company known as New Beginnings, and asked that Warren speak with her contact there, an individual named Jackie Graham ("Graham"). (*Id.* at ¶19.) Agreeing to explore that option, Warren investigated Berry's claims over the next several months, and spoke with Graham on numerous occasions to obtain information relating to Berry's application for a loan modification. (*Id.* at ¶20.) Upon investigating whether or not that was a valid argument, Warren discovered that Deutsche Bank and/or ASC denied Berry's numerous requests for a loan modification, and that when Berry was offered an alternative under the federal government's Home Affordable Modification Program ("HAMP"), she rejected that option. (*Id.* at ¶¶21-22.) Furthermore, Berry was unable to provide Warren any documentation to evidence any forbearance-type agreements with Deutsche Bank and/or ASC. (*Id.* at ¶23.) On several occasions, Warren also requested copies of the documentation Graham submitted on Berry's behalf, which were never provided; rather Graham's responses to Warren's requests for the documentation only contained discussions of New Beginnings' efforts in other states to fight loan servicers on the grounds that the servicers had no standing to bring foreclosure actions against homeowners. (*Id.* at ¶24.) Graham also began pressuring Warren and Berry to file a lawsuit against ASC alleging that the foreclosure was illegal and that ASC breached a loan modification agreement. (*Ibid.*) Warren advised Berry that Graham was not an attorney and organizations like New Beginnings were essentially engaging in the unauthorized practice of law. (*Id.* at ¶25.) Warren also provided Berry with legal research contradicting Graham's position. (*Ibid.*) Nonetheless, Berry became consumed with the idea Graham planted, and repeatedly asked Warren to file the lawsuit against ASC. (*Id.* at ¶26.) As a result of the information Warren discovered through his investigations and research, he explained to Berry that he was also unable to file a motion to rescind the Sheriff's Sale because Deutsche Bank and/or ASC had denied her a loan modification and she had rejected the only option available to her--the HAMP modification. (*Id.* at ¶27.) Warren also advised Berry that he

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would not file the proposed lawsuit against ASC because it was unsupported by the caselaw and could expose both Warren and her to damages because it was a frivolous claim. (*Ibid.*)

8. Warren admits the allegations set forth in Paragraph 8 of the Complaint insofar as a Final Judgment in the Foreclosure Litigation was entered on or about December 24, 2007. Warren denies the remaining allegations set forth in Paragraph 8 of the Complaint. By way of further response, Warren notes that the Final Judgment in the Foreclosure Litigation was entered in 2007, approximately 3 years prior to Warren's involvement with Berry. (See Warren Certif. at ¶7.) Warren also states that he was unable to file the Motion to Vacate based upon the fact that Berry had actually been served with the Foreclosure Complaint, (*id.* at ¶17), was unable to alternatively file a motion to rescind the Sheriff's Sale based upon the fact that Deutsche Bank and/or ASC denied Berry a loan modification, (*id.* at ¶27), and was unable to file the proposed lawsuit against ASC because it was unsupported by caselaw, (*ibid.*).

9. Warren denies the allegations set forth in Paragraph 9 of the Complaint. By way of further response, Warren states that it was Berry who actually contacted another attorney, Tamara Loatman-Clark, Esq. ("Loatman-Clark"), and that Berry directed Warren to transfer the file to Loatman-Clark. (See Warren Certif. at ¶29; Loatman-Clark Certif. at ¶¶5, 7.) Warren also states that he never had any discussions with Berry regarding Loatman-Clark's fees. (See Warren Certif. at ¶31.) Subsequently, Berry denied ever having known Loatman-Clark or directing Warren to transfer the file to Loatman-Clark. (*Id.* at ¶33.)

10. Warren admits the allegations set forth in Paragraph 10 of the Complaint insofar as Berry's Attorney Fee Arbitration Request Form is dated October 22, 2012.

11. Warren admits the allegations set forth in Paragraph 11 of the Complaint insofar as the docket number referenced therein was a docket number assigned to the fee arbitration matter ("Fee Arbitration Matter"). By way of further response, Warren states that the following docket numbers, in order of their assignment to the Fee Arbitration Matter, are reflected on the formal record:

a. Docket No. IIA-2012-0801F (first assigned to the District II-A Fee Arbitration Committee for Bergen County, North Bergen);

b. Docket No. VB-2013-0553F (after transfer to the District V-B Fee Arbitration Committee for Essex County, Suburban Essex, due to an incorrect venue assignment);

c. Docket No. VIII-2014-0506F (after transfer to the District VIII Fee Arbitration Committee for Middlesex County, due to a conflict in District V-B, Essex County, Suburban Essex); and

d. Docket No. VIII-2014-0012F (due to an internal docket number change by the District VIII Fee Arbitration Committee for Middlesex County).

12. Warren admits the allegations set forth in Paragraph 12 of the Complaint. By way of further response, however, Warren states that he failed to respond to the Fee Arbitration demand filed by Berry, when the matter was venued in District II-A, Bergen County, North Bergen because of an agreement to settle with Berry, negotiated through Warren's legal counsel, Robert Pickett, Esq. ("Pickett"), for a full refund of the fee Berry paid, (see Warren Certif. at ¶¶37-39; Pickett Certif. at ¶¶4-10); however, by the time the matter was transferred to District V-B, Essex County, Suburban Essex, and then to District VIII, Middlesex County, Warren was precluded from responding formally, (see Warren Certif. at ¶47). Additionally, both Pickett and Warren contacted the District VIII hearing panel chair, Marianne Greenwald, Esq. ("Greenwald") to advise her that Berry agreed to accept the refund (which she had agreed to at that time) but had not yet signed the Stipulation of Settlement, (see Warren Certif. at ¶45; Pickett Certif. at ¶17), and Warren provided Greenwald with a copy of a Stipulation of Settlement with his signature, as well as a copy of a check Warren wrote to Berry. (See Warren Certif. at ¶46; Pickett Certif. at ¶18.) During that discussion, Greenwald advised Warren that he need not appear for the fee arbitration hearing. (See Warren Certif. at ¶47; Pickett Certif. at ¶19.)

13. Warren admits the allegations set forth in Paragraph 13 of the Complaint. By way of further response, Warren refers to the above-response to Paragraph 12 of the Complaint.

14. Warren admits the allegations set forth in Paragraph 14 of the Complaint.

15. Warren admits the allegations set forth in Paragraph 15 of the Complaint.

16. Warren denies the allegations set forth in Paragraph 16 of the Complaint. By way of further response, Warren states that Berry agreed to accept a full refund of the fees she paid to Warren to resolve the matter. (See Warren Certif. at ¶¶37-39; Pickett Certif. at ¶4-10; see also, *supra*, at ¶12.)

17. Warren admits the allegations set forth in Paragraph 17 of the Complaint. By way of further response, Warren states that Berry had agreed to the settlement, but had not yet signed the Stipulation of Settlement. (See Warren Certif. at ¶¶37-39, 45; Pickett Certif. at ¶¶4-10, 17; see also, *supra*, at ¶12.) Warren

also states that he did provide a copy of the Stipulation of Settlement with his signature to Greenwald prior to the fee arbitration hearing, along with a copy of a check he wrote to Berry. (See Warren Certif. at ¶146; Pickett Certif. at ¶18; *see also, supra*, at ¶12.)

18. Warren admits the allegations set forth in Paragraph 18 of the Complaint insofar as they allege that Berry did not sign the Stipulation of Settlement. Warren is without sufficient information to admit or deny the remaining allegations set forth in Paragraph 18 of the Complaint. By way of further response, Warren was not present at the fee arbitration hearing due to Greenwald's representation that Warren need not attend. (See Warren Certif. at ¶47; Pickett Certif. at ¶19; *see also, supra*, at ¶12.)

19. Warren is without sufficient information to admit or deny the allegations set forth in Paragraph 19 of the Complaint. By way of further response, Warren was not present at the fee arbitration hearing due to his belief that Berry agreed to settle the matter, (see Warren Certif. at ¶¶45, 48), and Greenwald's representation that Warren need not attend. (*Id.* at ¶47; Pickett Certif. at ¶19; *see also, supra*, at ¶12.)

20. Warren admits the allegations set forth in Paragraph 20 of the Complaint.

21. Warren admits the allegations set forth in Paragraph 21 of the Complaint insofar as he was unable to pay Berry within 30 days of the fee arbitration decision. By way of further response, Warren states that he intended to send payment to Berry within the 30-day deadline; however, the address on file for Berry was incorrect and Warren was attempting to obtain Berry's correct address. (See Warren Certif. at ¶¶43, 52; Pickett Certif. at ¶¶16, 22.) After obtaining a valid address for Berry, Warren did pay Berry the full amount. (See Warren Certif. at ¶52; Pickett Certif. at ¶22.)

22. Warren admits the allegations set forth in Paragraph 22 of the Complaint insofar as they restate the findings made by the District VIII Fee Arbitration hearing panel. By way of further response, however, Warren states that those findings were inaccurate and based upon false and misleading testimony by Berry. (See Warren Certif. at ¶¶49, 51.) Insofar as the allegations set forth in Paragraph 22 of the Complaint allege wrongdoing by Warren, they are denied.

23. Warren admits the allegations set forth in Paragraph 23 of the Complaint insofar as they restate the findings made by the District VIII Fee Arbitration hearing panel. By way of further response, however, Warren states that he accurately represented to Greenwald that Berry agreed to settle the matter

but did not yet sign the Stipulation of Settlement, a copy of which Warren also provided to Greenwald prior to the fee arbitration hearing. (See Warren Certif. at ¶¶45-46; Pickett Certif. at ¶¶17-18; see also, *supra*, at ¶¶12, 17.) Insofar as the allegations set forth in Paragraph 23 of the Complaint allege wrongdoing by Warren, they are denied.

24. Warren is without sufficient information to admit or deny the allegations set forth in Paragraph 24 of the Complaint, and leaves the Committee to its proofs. By way of further response, Warren states that the specific reasons why this matter was referred to the Director of the Office of Attorney Ethics were not disclosed in the transmittal letter from the District VIII Fee Arbitration Committee; rather the transmittal letter only stated that the case involved "conduct that raised a substantial question as to the Attorney's honesty, trustworthiness or fitness as a lawyer." (See Warren Certif. at ¶53.)

25. Warren admits the allegations set forth in Paragraph 25 of the Complaint insofar as the correspondence from Elyse A. Kremins, Esq. ("Kremins"), a member of the Committee, was dated August 19, 2015. (See Warren Certif. at ¶56.)

26. Warren is without sufficient information to admit or deny the allegations set forth in Paragraph 26 of the Complaint insofar as whether or not a signed return receipt of delivery was received by the Committee, and leaves the Committee to its proofs. Warren denies the remaining allegations set forth in Paragraph 26 of the Complaint. By way of further response, Warren states that he did respond to Kremins' letter and provided copies of the documents he had on file regarding Berry. (See Warren Certif. at ¶57.) Warren also states that he attempted to reach Kremins by telephone but never received any response. (*Ibid.*)

27. Warren admits the allegations set forth in Paragraph 27 of the Complaint insofar as he did make a \$3,000 payment to Berry. (See Warren Certif. at ¶52; Pickett Certif. at ¶22.) Warren denies the remaining allegations set forth in Paragraph 27 of the Complaint. By way of further response, Warren states that he offered to refund the fees paid by Berry prior to the fee arbitration hearing, and Berry actually agreed to same prior to the fee arbitration hearing. (See Warren Certif. at ¶¶37-39; Pickett Certif. at ¶¶4-10.) Following the arbitration hearing, payment to Berry was delayed because of an incorrect mailing address he had on file for Berry, (see Warren Certif. at ¶¶43-44; Pickett Certif. at ¶16); however, upon

obtaining an updated address for Berry, Warren promptly sent the payment. (See Warren Certif. at ¶52; Pickett Certif. at ¶22.)

COUNT ONE

(Violation of RPC 1.1(a) and (b) - Gross Negligence and Negligence)

28. Warren repeats the foregoing responses to the allegations contained in Paragraphs 1 through 27 of the Complaint as though set forth fully at length herein.

29. Warren admits the allegations contained in Paragraph 29 of the Complaint. By way of further response, however, Warren states that the \$3,000 flat fee paid by Berry was to file a post-Judgment motion to vacate the Final Judgment of Foreclosure, (see Warren Certif. at ¶10), and that Warren did not represent Berry in the Foreclosure Litigation, (*id.* at ¶17).

30. Warren denies the allegations contained in Paragraph 30 of the Complaint.

31. Warren denies the allegations contained in Paragraph 31 of the Complaint. By way of further response, Warren states that he frequently communicated with Berry through e-mail, telephone and in person. (See Warren Certif. at ¶15.)

32. Warren admits the allegations set forth in Paragraph 32 of the Complaint insofar as he did not provide any billing records to Berry. Warren denies the remaining allegations set forth in Paragraph 32 of the Complaint. By way of further response, Warren states that the fee paid by Berry was a flat fee for filing the Motion to Vacate, and that Berry never requested any billing records from Warren. (See Warren Certif. at ¶29.) Warren also states that he offered to provide Berry with an itemization and explanation of the work performed on her behalf, but Berry refused same. (*Ibid.*; *see also, supra*, at ¶16.)

33. The allegations set forth in Paragraph 33 of the Complaint contain legal conclusions to which no response is required; however, insofar as the allegations set forth in Paragraph 33 of the Complaint allege wrongdoing by Warren and/or Warren is required to respond, they are denied.

COUNT TWO

(Violation of RPC 1.3 - Diligence)

34. Warren repeats the foregoing responses to the allegations contained in Paragraphs 1 through 33 of the Complaint as though set forth fully at length herein.

35. Warren denies the allegations set forth in Paragraph 35 of the Complaint.

36. Warren denies the allegations set forth in Paragraph 36 of the Complaint. By way of further response, Warren states that he was retained to file the Motion to Vacate, but did not draft any complaints on Berry's behalf. (See Warren Certif. at ¶27.) Warren also states that a Final Judgment was entered against Berry in the Foreclosure Litigation on December 24, 2007, (*id.* at ¶7), and Berry's home reverted to Deutsche Bank on July 22, 2009 (*id.* at ¶8), both of which occurred prior to Berry retaining Warren, (*id.* at ¶9). (See *also, supra*, at ¶3.)

37. Warren denies the allegations set forth in Paragraph 37 of the Complaint. By way of further response, Warren states that he frequently communicated with Berry through e-mail, telephone and in person. (See Warren Certif. at ¶15; *see also, supra*, at ¶31.)

38. Warren admits the allegations set forth in Paragraph 38 of the Complaint insofar as he did make a \$3,000 payment to Berry. Warren denies the remaining allegations set forth in Paragraph 38 of the Complaint. By way of further response, Warren states that he offered to refund the fees paid by Berry prior to the fee arbitration hearing, and Berry actually agreed to same prior to the fee arbitration hearing. (See Warren Certif. at ¶¶37-39; Pickett Certif. at ¶¶4-10; *see also, supra*, at ¶27.) Following the arbitration hearing, payment to Berry was delayed because of an incorrect mailing address he had on file for Berry, (see Warren Certif. at ¶¶43-44; Pickett Certif. at ¶¶16; *see also, supra*, at ¶27.); however, upon obtaining an updated address for Berry, Warren promptly sent the payment, (see Warren Certif. at ¶52; Pickett Certif. at ¶22; *see also, supra*, at ¶27.)

39. The allegations set forth in Paragraph 39 of the Complaint contain legal conclusions to which no response is required; however, insofar as the allegations set forth in Paragraph 39 of the Complaint allege wrongdoing by Warren and/or Warren is required to respond, they are denied.

COUNT THREE

(Violation of RPC 1.4 - Communication)

40. Warren repeats the foregoing responses to the allegations contained in Paragraphs 1 through 39 of the Complaint as though set forth fully at length herein.

41. Warren denies the allegations set forth in Paragraph 41 of the Complaint. By way of further response, Warren states that he frequently communicated with Berry through e-mail, telephone and in person. (See Warren Certif. at ¶15; *see also, supra*, at ¶¶31, 37.)

42. Warren admits the allegations set forth in Paragraph 42 of the Complaint insofar as he did not provide any billing records to Berry. Warren denies the remaining allegations set forth in Paragraph 42 of the Complaint. By way of further response, Warren states that the fee paid by Berry was a flat fee for filing the Motion to Vacate, and that Berry never requested any billing records from Warren. (See Warren Certif. at ¶¶10, 29; see also, *supra*, at ¶32.) Warren also states that he offered to provide Berry with an itemization and explanation of the work performed on her behalf, but Berry refused same and instead directed Warren to transfer the case to Loatman-Clark. (See Warren Certif. at ¶29; see also, *supra*, at ¶¶6, 32.)

43. Warren denies the allegations set forth in Paragraph 43 of the Complaint. By way of further response, Warren states that it was Berry who actually contacted Loatman-Clark, and that Berry directed Warren to transfer the file to Loatman-Clark. (See Warren Certif. at ¶29; Loatman-Clark Certif. at ¶¶5, 7; see also, *supra*, at ¶9.)

44. The allegations set forth in Paragraph 44 of the Complaint contain legal conclusions to which no response is required; however, insofar as the allegations set forth in Paragraph 44 of the Complaint allege wrongdoing by Warren and/or Warren is required to respond, they are denied.

COUNT FOUR
(Violation of RPC 1.5(b) - No Retainer)

45. Warren repeats the foregoing responses to the allegations contained in Paragraphs 1 through 44 of the Complaint as though set forth fully at length herein.

46. Warren denies the allegations set forth in Paragraph 46 of the Complaint. By way of further response, Warren states that a written retainer letter was provided to Berry. (See Warren Certif. at ¶13; see also, *supra*, at ¶4.)

47. Warren admits the allegations set forth in Paragraph 47 of the Complaint insofar as he did not provide any billing records to Berry. Warren denies the remaining allegations set forth in Paragraph 47 of the Complaint. By way of further response, Warren states that the fee paid by Berry was a flat fee for filing the Motion to Vacate, and that Berry never requested any billing records from Warren. (See Warren Certif. at ¶¶10, 29; see also, *supra*, at ¶¶32, 42.) Warren also states that he offered to provide Berry with an itemization and explanation of the work performed on her behalf, but Berry refused same and instead

directed Warren to transfer the case to Loatman-Clark. (See Warren Certif. at ¶¶29; see also, *supra*, at ¶¶16, 32, 42.)

48. The allegations set forth in Paragraph 48 of the Complaint contain legal conclusions to which no response is required; however, insofar as the allegations set forth in Paragraph 48 of the Complaint allege wrongdoing by Warren and/or Warren is required to respond, they are denied.

COUNT FIVE
(Violation of RPC 1.6 - Confidentiality)

49. Warren repeats the foregoing responses to the allegations contained in Paragraphs 1 through 48 of the Complaint as though set forth fully at length herein.

50. Warren denies the allegations set forth in Paragraph 50 of the Complaint. By way of further response, Warren states that it was Berry who actually contacted Loatman-Clark, and that Berry directed Warren to transfer the file to Loatman-Clark. (See Warren Certif. at ¶¶29; Loatman-Clark Certif. at ¶¶5, 7; see also, *supra*, at ¶¶19, 43.)

51. Warren denies the allegations set forth in Paragraph 51 of the Complaint. By way of further response, Warren states that he provided Loatman-Clark with information regarding Berry's case only after Berry directed him to transfer the file to Loatman-Clark. (See Warren Certif. at ¶¶29-30, 32; Loatman-Clark Certif. at ¶¶5, 7, 10-11.)

52. The allegations set forth in Paragraph 52 of the Complaint contain legal conclusions to which no response is required; however, insofar as the allegations set forth in Paragraph 52 of the Complaint allege wrongdoing by Warren and/or Warren is required to respond, they are denied.

COUNT SIX
**(Violation of RPC 8.1(b), Rule 1:20-3(g)(3) -
Failure To Cooperate With Disciplinary Proceeding)**

53. Warren repeats the foregoing responses to the allegations contained in Paragraphs 1 through 52 of the Complaint as though set forth fully at length herein.

54. Warren admits the allegations set forth in Paragraph 54 of the Complaint. By way of further response, however, Warren states that he failed to respond to the Fee Arbitration demand filed by Berry, when the matter was venued in District II-A, Bergen County, North Bergen because of an agreement to settle with Berry, negotiated through Pickett, for a full refund of the fee Berry paid, (see Warren Certif. at

¶¶37-39, 48; Pickett Certif. at ¶¶4-10); however, by the time the matter was transferred to District V-B, Essex County, Suburban Essex, and then to District VIII, Middlesex County, Warren was precluded from responding formally, (see Warren Certif. at ¶47). Additionally, both Pickett and Warren contacted Greenwald to advise her that Berry agreed to accept the refund (which she had agreed to at that time) but had not yet signed the Stipulation of Settlement, (see Warren Certif. at ¶45; Pickett Certif. at ¶17; see also, *supra*, at ¶¶12, 17, 23), and Warren provided Greenwald with a copy of a Stipulation of Settlement with his signature, as well as a copy of a check Warren wrote to Berry, (see Warren Certif. at ¶46; Pickett Certif. at ¶18; see also, *supra*, at ¶¶12, 17, 23). During that discussion, Greenwald advised Warren that he need not appear for the fee arbitration hearing. (See Warren Certif. at ¶47; Pickett Certif. at ¶19; see also, *supra*, at ¶¶12, 17, 23.)

55. Warren admits the allegations set forth in Paragraph 55 of the Complaint insofar as the correspondence from Kremins was dated August 19, 2015. (See Warren Certif. at ¶56; see also, *supra*, at ¶25.)

56. Warren denies the allegations set forth in Paragraph 56 of the Complaint. By way of further response, Warren states that he did respond to Kremins' letter and provided copies of the documents he had on file regarding Berry. (See Warren Certif. at ¶57; see also, *supra*, at ¶26.) Warren also states that he attempted to reach Kremins by telephone but never received any response. (See Warren Certif. at ¶57; see also, *supra*, at ¶26.)

57. Warren denies the allegations set forth in Paragraph 57 of the Complaint. By way of further response, Warren states that he would have responded to the fee arbitration demand if Berry had not agreed to settle the matter, (see Warren Certif. at ¶48), and also advised Greenwald of his and Pickett's discussions regarding settlement with Berry. (See Warren Certif. at ¶¶45-46; Pickett Certif. at ¶¶17-18; see also, *supra*, at ¶¶12, 17, 23, 54.) Warren also states that he did responded to Kremins' letter, provided copies of the documents he had on file regarding Berry and attempted to reach Kremins by telephone but never received any response. (See Warren Certif. at ¶57; see also, *supra*, at ¶¶26, 56.)

58. The allegations set forth in Paragraph 58 of the Complaint contain legal conclusions to which no response is required; however, insofar as the allegations set forth in Paragraph 58 of the Complaint allege wrongdoing by Warren and/or Warren is required to respond, they are denied.

COUNT SEVEN
(Violation of RPC 8.2 - Knowing False Statement)

59. Warren repeats the foregoing responses to the allegations contained in Paragraphs 1 through 58 of the Complaint as though set forth fully at length herein.

60. Warren denies the allegations set forth in Paragraph 60 of the Complaint. By way of further response, Warren states that both he and Pickett contacted the Greenwald to advise her that Berry agreed to accept the refund (which Berry had agreed to at that time) but had not yet signed the Stipulation of Settlement, (see Warren Certif. at ¶45; Pickett Certif. at ¶17; see also, *supra*, at ¶¶12, 17, 23, 54, 57), and provided Greenwald with a copy of a Stipulation of Settlement signed by Warren, as well as a copy of a check Warren wrote to Berry, (see Warren Certif. at ¶46; Pickett Certif. at ¶18; see also, *supra*, at ¶¶12, 17, 23, 54, 57).

61. The allegations set forth in Paragraph 61 of the Complaint contain legal conclusions to which no response is required; however, insofar as the allegations set forth in Paragraph 61 of the Complaint allege wrongdoing by Warren and/or Warren is required to respond, they are denied.³

COUNT EIGHT
(Violation of RPC 8.4(c) - Dishonesty/Misrepresentation)

62. Warren repeats the foregoing responses to the allegations contained in Paragraphs 1 through 61 of the Complaint as though set forth fully at length herein.

63. Warren denies the allegations set forth in Paragraph 63 of the Complaint. By way of further response, Warren states that both he and Pickett contacted the Greenwald to advise her that Berry agreed to accept the refund (which Berry had agreed to at that time) but had not yet signed the Stipulation of Settlement, (see Warren Certif. at ¶45; Pickett Certif. at ¶17; see also, *supra*, at ¶¶12, 17, 23, 54, 57, 60), and

³ It is noted that Count Seven of the Complaint alleges a violation of *RPC 8.2*; however, that rule relates to false statements regarding "the qualifications of a judge, adjudicatory officer or other public legal officer, or of a candidate for election or appointment to judicial or legal office," as well as compliance with the Code of Judicial Conduct by attorneys who have been confirmed for judicial office. See *RPC 8.2*. While the Presenter may have intended to reference *RPC 8.1(a)*, that rule relates to false statements in connection with a disciplinary matter, which arguably would not include a fee arbitration proceeding--notwithstanding the fact that Warren denies making any knowingly false statements to anyone in connection with the Berry matter, including without limitation Greenwald or any other member of the District VIII Fee Arbitration Committee.

provided Greenwald with a copy of a Stipulation of Settlement signed by Warren, as well as a copy of a check Warren wrote to Berry, (see Warren Certif. at ¶46; Pickett Certif. at ¶18; see also, *supra*, at ¶¶12, 17, 23, 54, 57, 60).

64. The allegations set forth in Paragraph 64 of the Complaint contain legal conclusions to which no response is required; however, insofar as the allegations set forth in Paragraph 64 of the Complaint allege wrongdoing by Warren and/or Warren is required to respond, they are denied.

WHEREFORE, the Complaint against Warren, alleging various ethical violations, should be dismissed with prejudice, and Warren's permanent record on file with the Supreme Court of New Jersey, the New Jersey Office of Attorney Ethics, the New Jersey Board of Bar Examiners and other courts or agencies, should be cleared of any allegations of wrongdoing, unethical conduct and/or other misconduct.

SEPARATE AFFIRMATIVE DEFENSES

FIRST SEPARATE DEFENSE

Warren did not violate any of the Rules of Professional Conduct or any other Court Rules promulgated by the Supreme Court of New Jersey.

SECOND SEPARATE DEFENSE

Warren's conduct with respect to the handling of Berry's case did not constitute gross negligence.

THIRD SEPARATE DEFENSE

Warren's conduct with respect to the handling of Berry's case did not constitute a pattern of negligence.

FOURTH SEPARATE DEFENSE

Warren, at all times with respect to the handling of Berry's case, acted with reasonable diligence and promptness.

FIFTH SEPARATE DEFENSE

Warren, at all times with respect to the handling of Berry's case, kept Berry reasonably informed about the status of her case.

SIXTH SEPARATE DEFENSE

Warren, at all times with respect to the handling of Berry's case, promptly complied with all reasonable requests for information.

SEVENTH SEPARATE DEFENSE

Warren, at all times with respect to the handling of Berry's case, explained the matter to the extent reasonably necessary to permit Berry to make informed decisions regarding her case.

EIGHTH SEPARATE DEFENSE

Warren, at all times with respect to the handling of Berry's case, advised Berry of the relevant limitations of his representation.

NINTH SEPARATE DEFENSE

Warren communicated the basis and/or rate of his fee to Berry, in writing, before or within a reasonable time after commencing his representation.

TENTH SEPARATE DEFENSE

Warren offered to Berry, but Berry refused to accept, billing records and/or an explanation of the work performed in exchange for the fee paid by Berry.

ELEVENTH SEPARATE DEFENSE

Warren, at all times with respect to the handling of Berry's case, kept all information relating to the case confidential except for information disclosed to third-parties (e.g., Loatman-Clark, etc.) in accordance with Berry's express directives.

TWELFTH SEPARATE DEFENSE

Berry directed Warren to transfer her case to Loatman-Clark.

THIRTEENTH SEPARATE DEFENSE

Warren submitted information relating to the ethics grievance to Kremins and attempted to contact Kremins by telephone after submitting said information; however, Kremins never responded to Warren's communications.

FOURTEENTH SEPARATE DEFENSE

Warren did not make any false statements to Greenwald or any other member of the District VIII Fee Arbitration Committee; rather, based upon information known to Warren at that time, he accurately stated to Greenwald that Berry agreed to settle the fee arbitration matter and accept a full refund of the fee paid to Warren, but Berry had not yet signed the Stipulation of Settlement.

FIFTEENTH SEPARATE DEFENSE

Warren did not engage in any conduct involving dishonesty, fraud, deceit or misrepresentation.

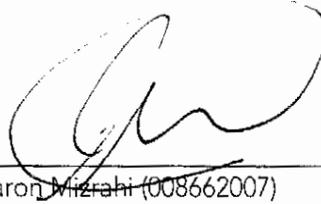
WHEREFORE, the Complaint against Warren, alleging various ethical violations, should be dismissed with prejudice, and Warren's permanent record on file with the Supreme Court of New Jersey, the New Jersey Office of Attorney Ethics, the New Jersey Board of Bar Examiners and other courts or agencies, should be cleared of any allegations of wrongdoing, unethical conduct and/or other misconduct.

REQUEST FOR HEARING PURSUANT TO R. 1:20-4(e)

Pursuant to R. 1:20-4(e), Respondent Dwayne D. Warren, Esq., hereby requests a full hearing on the charges alleged in the Complaint.

DESIGNATION OF COUNSEL PURSUANT TO R. 1:20-4(g)

Pursuant to R. 1:20-4(g), Respondent Dwayne D. Warren, Esq., hereby designates Aaron Mizrahi, Esq., as his legal counsel with respect to any and all proceedings and/or hearings relating to this matter.



Dated: June 23, 2016

Aaron Mizrahi (008662007)
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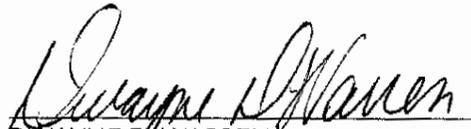
VERIFICATION OF ANSWER

I, Dwayne D. Warren, am the respondent in the within disciplinary action and hereby certify as follows:

1. I have read every paragraph of the foregoing Answer to the Complaint and verify that the statements therein are true and based on my personal knowledge.

2. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: June 23, 2016


DWAYNE D. WARREN