SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 11-040
District Docket No. VIII-2009-0028E

IN THE MATTER OF	:
ROGER J. WEIL	:
AN ATTORNEY AT LAW	:

Decision

Argued: April 21, 2011

Decided: July 22, 2011

Timothy J. Little appeared on behalf of the District VIII Ethics Committee.

David H. Dugan, III appeared on behalf of respondent.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was before us on a recommendation for discipline (five-year suspension) filed by the District VIII Ethics Committee (DEC). The complaint charged respondent with having violated RPC 1.8 (c) (a lawyer shall not prepare an instrument giving . . . a spouse any substantial gift from a

is related to the attorney)[1], RPC 1.16, presumably (a) (1) (a lawyer shall not represent a client if it will result in the violation of the RPCs); RPC 8.4(c) (conduct involving misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice). We determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1979. He has no prior discipline.

At the inception of the DEC hearing, before testimony was taken or other evidence presented, respondent admitted having violated RPC 1.8(c) and RPC 1.16(a)(1). He contested, through counsel, the RPC 8.4(c) and RPC 8.4(d) charges.

The salient facts are largely uncontested. The record is, however, rife with unsubstantiated allegations of wrongdoing, brought by the grievant, Sheila Grossi Redman. In essence, Redman complained that respondent and his wife, Carolyn Bjorlo, wheedled

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[1] The rule was amended, effective January 1, 2004, to expand "related persons" to include "other relative or individual with whom the lawyer or the client maintains a close, familial relationship." The amended rule was not yet in effect when the alleged misconduct took place, but was raised by respondent for purposes of mitigation, as seen below.

their way, over a twenty-year friendship with her brother, into his last will and testament and that of their mother.

In October 2003, respondent's friend and longtime client, Fred Grossi, retained respondent to prepare his will. Fred signed the will on October 7, 2003, at which time it was witnessed by Robert Simon, an associate in respondent's office, and Joanne Caswell, respondent's secretary. Another employee in respondent's office, Michelle Snyder, affixed her notary seal.

The will directed that, in the event of Fred's death, his estate would pass to his mother, Monica Grossi (Mrs. Grossi). If his mother predeceased him, then his estate was to pass to his dear friend, Bjorlo, who is respondent's wife.

In March 2004, Mrs. Grossi retained respondent to prepare her last will and testament, which left her entire estate to her son, Fred. The will expressly disinherited Redman. On March 22, 2004, Mrs. Grossi executed the will, which was witnessed by respondent and Joanne Caswell and notarized by Snyder.[2]

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[2] Redman alleged that Mrs. Grossi was incompetent and suffered from dementia, but there is no evidence in the record of any such disability.

Mrs. Grossi died unexpectedly on July 17, 2005. Fred, too, died unexpectedly, just a few months later, on September 20, 2005. Consequently, Bjorlo became the sole beneficiary of both estates, valued at about $1,300,000.

Redman, who had been specifically disinherited in both wills, testified at the DEC hearing that, in 1970, she had left New Jersey for California, where she lived until 2004, when she moved to Utah.

In April 2005, Redman made a rare trip east and visited with her mother and brother. On that trip, she learned that Mrs. Grossi had disinherited her in a recent will. She recalled that Fred had called her to "the secret hiding place" in their mother's cellar, where the mother kept important documents. There, Fred showed her the March 2004 will that respondent had prepared. According to Redman, "from that point on I knew about her new will".

Redman was unaware at the time, however, that Fred, too, had disinherited her in his will. She believed that both Fred and her mother had prior wills, but admitted that she had never seen them. She did recall that, at one time, Fred had indicated an intention to leave money to her and to her children.

Redman further testified that she kept in touch with her brother over the years and believed that they were on good terms, "with the exception of one little spot where my brother was angry," in September 2003.

On cross-examination, Redman conceded that this "angry" period started the month before Fred had respondent draft a new will and that it lasted until December 2004, during which time they did not communicate with each other. According to Redman, Fred was angry that she had not come east to see their dying father or to attend his funeral, despite three attempts by Mrs. Grossi to convince her to do so. She explained that work and financial pressures had prevented her from making the trip.

Redman also portrayed her brother as a manipulator who had grappled for years with mental illness, for which he was hospitalized in 1995 and periodically thereafter, until his death. He had "schizophrenia and bipolar disorder. Alcohol addiction. Catatonic depression. He even had seizures at one time. There is a lot of things that I would say, the most serious being the one that qualified him for his Social Security was [sic] the schizophrenia in '02." She also claimed that Fred had become addicted to Lorcet, one of his prescription medications.

Redman further testified that her mother was healthy until about 2002, when Fred had told her, their mother had begun to "lose her mind."[3]

Respondent's wife, Bjorlo also testified at the DEC hearing. It was she who had introduced respondent to Fred. Bjorlo met Fred in the mid 1980s, when he had taken a position as her supervisor, at AT&T. The two had become friendly. Over the next twenty years, they had developed a very close friendship. That friendship had continued through Fred's later retirement from AT&T and Bjorlo's marriage to respondent, in April 1993. In fact, after respondent and Bjorlo had wed, all three had become fast friends and had socialized together regularly.

As to the genesis of Fred's 2004 will, Bjorlo testified that she and respondent had dined with him many times over the years, especially at Fred's favorite restaurant, "Vincenzo's." Bjorlo and Fred had also celebrated their birthdays together for many years, agreeing never to exchange birthday gifts.

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[3] Respondent's counsel objected to her testimony as outside the scope of the complaint, which did not include any charges of wrongdoing arising out of either of the decedents' competence to execute their wills. The panel chair allowed the testimony.

In September 2003, Bjorlo and respondent celebrated Fred's birthday with a dinner for him and a number of his friends at Vincenzo's. Bjorlo recalled a peculiar event that had occurred that evening:

> He suddenly said he had something to say to the group and that he had a birthday present for me. And I said, well, Fred, we agreed not to exchange presents, because I didn't have anything for him. And he said, no, no, it is something a little different. And then he announced that he was going to have a will done and that I would be the beneficiary after Monica.
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> [T122-20 to T123-3.] [4]

Respondent testified that he had met Fred through Bjorlo's prior friendship with Fred, and that the three had become friends. Respondent also recalled having represented Fred on numerous occasions, over the years. The representation started as early as 1994, in a traffic matter and extended to four or five real estate transactions and a workers' compensation claim.

When asked why Fred and Mrs. Grossi had written Redman out of their wills, respondent recalled that Fred had spoken to him

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[4] "T" refers to the July 15, 2010 DEC hearing transcript.

on numerous occasions about his and his mother's estrangement from Redman. Two aspects of her behavior particularly upset Fred. The first was her failure to visit their father, Ralph, when he was dying:

> Like for instance, when their father was ill suffering from cancer, which from my understanding was a fairly long process, Ralph would repeatedly ask Fred and/or [Mrs. Grossi] to get a hold of Sheila to come out and, because Ralph knew he was on, this was the final illness. It was pretty clear. And that he was in great pain and he wanted the comfort of having his daughter, his first born near the bedside to be able to give him some comfort and talk about whatever was going to happen from there forward. And when Sheila was contacted, she appeared very cavalier about it, made various excuses, that she was working for some sort of a check cashing agency I think was one of the things that I heard.
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> [Ex.D57-15 to 58-4.]

In addition, respondent cited Fred's aversion to his sister's chosen lifestyle:

> Q. Were there any other issues that you haven't described to me that he mentioned to you about Sheila?
>
> A. Yeah, there was.
>
> Q. What?
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> A. The fact that she was a lesbian and the fact that that behavior disgusted him and that his mother was elderly when she found out about

> that and was embarrassed by it because people in that age bracket had a hard time dealing with such a thing and that they were trying to keep that secret, that it seemed like Sheila was more, coming more towards coming out of the closet and making it more of a pronounced type of an involvement. And he didn't like that.
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> [Ex.D86-2 to 16.]

Ultimately, Redman settled the underlying estate litigation for fifty-five percent of the combined estates, or $700,000. Bjorlo received the remaining forty-five percent, or $600,000.

Respondent was also charged with having violated RPC 8.4(c) and (d) for "engaging in conduct involving misrepresentation or conduct that is prejudicial to the administration of justice." According to the complaint, "respondent engaged in such conduct during his deposition whereby he would not accept responsibility for the preparation of the Last Will and Testament of the decedents. Such conduct was designed to protect his wife, Carolyn Bjorlo, to the detriment of the Grievant."

At the DEC hearing, the parties agreed that only the following excerpts from respondent's deposition in the estate litigation would be considered for purposes of the RPC 8.4(c) and (d) charges. The presenter read those excerpts directly into the record:

MR. LITTLE: Beginning on page 60, line 18, and I'll read it as question and answer, answer being Mr. Weil.
"Question: So what did you do when you received this phone call from Fred directing you to prepare a will in that regard?
"Answer: I passed the information along to whoever would prepare the will.
"Question: So you don't recall who that is?
"Answer: I would say it was more likely than not Robert Simon, but I can't tell you.
"Question: Would you have taken notes?
"Answer: Only to the extent of at that point of [sic] making sure the names are spelled correctly and that's it. I knew how to spell Monica. I knew how to spell Fred and Sheila, so probably it could have been something as long as I knew Fred and the basis of the simplicity of what it was and it would just be a matter of -- it was Robert Simon, for instance -- if it was Robert Simon, for instance, his office is upstairs. I would say Fred has an appointment for such and such a date, here is what I want you to do. And then he might, he probably would have taken those notes, jot it down. He didn't know him, obviously, to the extent that I did, if at all.
"What would have happened to his notes?" a question.
"Answer: I don't know. He probably would have destroyed them."
And that's pages 60 and 61. Going back to page 54, line 7:
"Question: Did you prepare Fred's will of 2003?
"Answer: What do you mean, 'prepare'?
"Question: Just what I said.
"Answer: Well, did I type it? I did not type it.
"Question: Okay. Can you explain to me how that will was produced?
"Answer: How it actually came into being?
"Question: Yes.

"Answer: Yes. That I can do. Fred called me and this was following a dinner which occurred, it was more or less a mutual dinner which would be held practically every year because Carolyn, my wife's birthday and friends are very close in proximity. During one of those get-togethers, I think it was in 2003, September 2003, Fred had declared in the presence of others that, in fact, he was interested in the event that his mother predeceased him to have Carolyn inherit his estate.

"Shortly afterwards Fred called me to follow through with that. He called me on the phone and told me what he wanted to have in the will, and then I imparted that information, it was either to Robert Simon or to a secretary to prepare it. It was very basic in terms of what it said.

"Did you review the will after it was prepared but before he signed it?

"Probably so."

And, lastly, page 74, beginning line 15. I'm going to go back a little bit more. Question beginning on line 8.

"Question: Okay. Now when Fred Grossi called you shortly after the dinner in September of 2003 to prepare his will, was that the first time that you had ever been faced with a circumstance of preparing a will that had a contingent beneficiary as your wife or a nonfamily member?

"Answer: Yes.

"Question: Did you review any rules of professional conduct in regard to that preparation?

"Answer: At what time?

"Question: At the time that Fred asked you to prepare the will.

"Answer: No.

"Question: Did it ever cross your mind to do that?

"Answer: No.

"Question: Have you subsequently looked at the rules of professional conduct?
"Answer: I have seen the footnotes. I haven't read, still to this minute, I haven't read the rule myself, but I have seen it in certain -- over certain capacity, though. I have an ethics grievance that your client filed and the responses that ensued.
"Question: When you prepared the response, did that cause you to look at the rule?
"Answer: When I prepared?
"Question: The response to the grievance.
"Answer: I still didn't look at the rule.
"Question: Is it fair to say to this date you have never looked at the rule?
"Answer: I still haven't read the rule myself, no."

[T82-17 to T87-15.]

Upon completing this recitation, the presenter rested his case.

For his part, respondent denied that this back-and-forth exchange with the interrogating attorney at his deposition amounted to a misrepresentation about his responsibility for the will. He had not been trying to "play games" with his interrogator. Rather, he wanted to know what was meant by the word "prepare:"

> The source of this matter, I was not a party to the litigation but, obviously, I was an important witness in the case. The litigation was contentious. I was being questioned by another attorney who had had different attorneys in his office take

> various depositions, but he chose to take mine because he knew I was an important witness in the case. So I was very careful with what he asked me and how I analyzed what his questions were. I was not trying to play games. I was trying to figure out what he meant and to tell him what my procedure was and making sure I answered the question as correctly as I could and understood what he wanted. I even asked what do you mean by 'prepare.'
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> Q. Then he asked you to explain how the will was produced. And is your testimony exactly what you gave us earlier here --
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> A. Yes.
>
> Q. -- as to how it was produced?
>
> A. Yes.
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> [T159-22 to 160-18.]

In a March 15, 2011 brief to us, respondent's counsel reiterated respondent's admission of the RPC 1.8(c) and RPC 1.16(a)(1) violations. Counsel also summarized respondent's argument in defense of the RPC 8.4(c) and (d) charges:

> Respondent did quarrel with his interrogator over the meaning of 'prepare,' with respondent insisting that he did not 'type' Fred's will. However, a careful reading of the deposition transcript shows clearly that respondent fully acknowledged having the will prepared in his office, under his supervision. At one point he stated explicitly 'to my knowledge it's the first will I've prepared for Fred Grossi.' As the

> context of this quote shows, this was not an admission forced from a reluctant witness. Respondent made the acknowledgment freely, in the natural flow of his testimony. There simply is no basis for the RPC 8.4 charge and it should be dismissed [citations omitted].
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> [Rb2-Rb3.][5]

In mitigation, respondent has urged that he was unaware that RPC 1.8(a) prohibited him from preparing a will that named his wife as a contingent beneficiary. He also argued, in mitigation that, had the amended version of the rule been in effect in October 2003, when he prepared Fred's will, his actions might not have constituted an ethics infraction. The amended rule, which became effective January 1, 2004, states that

> [a] lawyer shall not prepare on behalf of a client an instrument giving . . . a person related to the lawyer any substantial gift unless the . . . recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent, or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

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[5] "Rb" refers to respondent's counsel's brief to us.

Respondent argued that Bjorlo might have been a "related person" under the amended rule, given her close relationship with Fred. Under that scenario, he claimed, there would have been no prohibition against preparing such a will for Fred.

In addition, respondent urged that he has been a member of the New Jersey bar for over thirty years, without prior incident. He also expressed remorse, at the DEC hearing:

> I'm embarrassed about it. I should have known better. I have been practicing for long enough to know better. I'm embarrassed that it has happened. I feel bad that I'm here, that I have to spend the committee's time on it. I'm embarrassed that I did something that the rules say I should not have done.
> I didn't knowingly do it. I feel badly about that. I feel badly that litigation had to ensue over it and that everybody involved in the case actually had to get involved with it this far in it.
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> [T162-14 to 25.]

Finally, respondent's counsel noted that, had another attorney prepared the will instead of respondent, the contents would have been the same. In addition, Bjorlo was only a contingent beneficiary. Therefore, there was no guarantee that she would ever receive anything under Fred's will.

The DEC found that respondent violated RPC 1.8(c) by improperly drafting a will for a client that named respondent's

wife as a contingent beneficiary and RPC 1.16(a)(1) by failing to refuse the representation, as respondent so stipulated.

The DEC also found that respondent violated RPC 8.4(c) and RPC 8.4(d). The DEC concluded that respondent "did attempt to misrepresent and engage in conduct prejudicial to the administration of justice at the time of his deposition by failing to admit that he had prepared, or had overseen the preparation" of Fred's will.

The hearing panel report discussed mitigation and aggravation:

> Quite frankly, the Committee found no mitigating factors. The Committee was quite concerned by the fact that the Respondent's wife had received in excess of $600,000 from the estate of the late Frederick Gross [sic] and has failed to repay any portion of said sum.[6] The Panel concluded that the Respondent's actions were designed to result in the Respondent's wife receiving a considerable sum of money upon the passing of Mr. Grossi. Had it not been for Mr. Grossi's sister pursuing litigation, the Respondent's wife would have inherited in excess of $1.3 million.
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> [HPR11.][7]

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[6] There is no indication in the record that there might be a reason for the return of the settlement funds.

[7] "HPR" refers to the hearing panel report.

The DEC recommended a five-year suspension, with no support for its recommendation.

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical was fully supported by clear and convincing evidence.

There is no quarrel that respondent violated RPC 1.8(c) by preparing Fred's will, under which his wife was a named contingent beneficiary. The version of RPC 1.8 (c) in effect at the time the will was drafted stated, in relevant part, that "a lawyer shall not prepare an instrument giving . . . a spouse any substantial gift from a client, including a testamentary gift, except where the client is related to the attorney." Obviously, respondent was not related to Fred, having met him through his wife.

Respondent also stipulated that he violated RPC 1.16 (a)(1), which prohibited him from undertaking Fred's will-preparation under circumstances where it violated the RPCs.

We do not find, however, that respondent violated RPC 8.4(c) or (d), when testifying in the underlying estate litigation. The limited excerpts before us clearly show an antagonism between respondent and the interrogating attorney, which occurred against the backdrop of contentious litigation

over the will, but nothing more. In several instances in that deposition, respondent claimed overall responsibility for the preparation of the will. Additionally, it was obvious on the faces of both wills that they had been prepared by respondent, as the words "Prepared by: Roger J. Weil, Esq." appear on the cover pages of each document. Moreover, although respondent did not personally witness Fred's signature, there was no ethics obligation that he do so. Another attorney, Robert M. Simon, an associate attorney in his office, did so.

In short, we find that the harmless verbal sparring between two attorneys over the definition of "preparing" the document, in the midst of such obvious and admitted evidence that respondent had prepared the wills, did not warrant the invocation of RPCs 8.4(c) and (d). We, therefore, dismiss both charges.

Either admonitions or reprimands have been imposed for conduct similar to that of respondent. See, e.g., In the Matter of Robert F. Spencer, DRB 08-068 (May 30, 2008) (admonition for attorney who prepared a last will and testament for a woman who would later leave an estate valued at between $300,000 and $400,000; although unrelated to the decedent, the attorney was one of ten residuary beneficiaries named in the will that he

prepared; mitigating factors included a previous unblemished record of thirty-six years; the fact that he disclaimed his share of the estate once he realized that there were objections to his designation as a beneficiary; and his cooperation with the ethics investigation by entering into a stipulation of facts); In the Matter of Kenneth H. Ginsberg, DRB 02-449 (February 14, 2003) (admonition for attorney who drafted a will for a client and named himself the recipient of a specific bequest of $10,000; the attorney was unaware at the time that RPC 1.8(c) specifically prohibited that action; the attorney took steps to dissuade the long-time client from leaving the bequest and recommended that she obtain another attorney to draft the will; when she insisted on his representation, he made her sign an acknowledgment that she had requested him to prepare the will, despite his advice; the attorney had a prior reprimand for assisting a client in backdating estate-planning documents to permit the client to take advantage of tax provisions that might not otherwise have been available); In the Matter of Frederick L. Bernstein, DRB 98-128 (April 27, 1998) (admonition for attorney who, as the scrivener of several wills for the same client, named himself as a beneficiary, claiming that the provision was intended to satisfy his legal fee); In the Matter

of Robert C. Gruhin, DRB 97-403 (February 9, 1998) (admonition for attorney who prepared a codicil to the will of a longstanding client, which included a bequest to himself of $25,000; the attorney did not advise the client to seek independent counsel about the desire to bequeath a "substantial" gift to him); In re Van Dam, 187 N.J. 67 (2006) (reprimand for attorney who drafted a will for his client in which he named himself as a contingent beneficiary; according to the attorney, he did not want to be named in the will because he deemed it inappropriate, but the client insisted; there was no evidence to rebut the attorney's contention in this regard; the attorney had a prior three-year suspension); In re Hock, 172 N.J. 349 (2002) (reprimand for attorney who drafted several wills for a client who left a large share of her estate worth $1.1 million to the attorney and his wife; the attorney had suggested that the client have another lawyer draft the wills, which she refused, and had another attorney in his office review the will with her; the attorney was also guilty of taking an improper jurat); In re Mangold 148 N.J. 76 (1997) (reprimand for attorney who drafted a will, served as the executor of the estate and benefited from the estate by removing items, specifically furniture and stamps, allegedly orally given to him by the testator); and In re Polis,

136 N.J. 421 (1994) (reprimand for attorney who prepared a will for an elderly client giving most of her $500,000 estate to the attorney's sister, thereby creating a conflict of interest; there were serious questions about the competence of the testator). But see In re Tobin, 186 N.J. 67 (2006) (censure for attorney who drafted a will naming himself a beneficiary of the estate; the attorney advised the client to have another attorney draft the instrument; when she refused, he had other attorneys speak with her to confirm that she wanted him as her beneficiary; prior reprimand imposed for conflict of interest in an improper business transaction with a client, misrepresentation, negligent misappropriation, commingling of funds belonging to clients and investors (including the attorney), and recordkeeping violations; the reprimand misconduct occurred after the attorney drafted the will in the censure matter).

Here, there are no aggravating factors – certainly not the one found so objectionable by the DEC, namely, that respondent's wife received $600,000 from the estate. There is no evidence in the record that Fred did not intend for Bjorlo to inherit his estate, which serendipitously included that of his recently deceased mother. In fact, it appears from this record that

respondent's wife would likely have received everything, had any attorney but respondent prepared the wills.

In mitigation, respondent has an unblemished career of over thirty years at the New Jersey bar and expressed sincere remorse for his actions.

Two of the admonition cases, Spencer and Ginsburg, involved attorneys who took extra measures to ensure that the testators' true intent was expressed in their wills. The attorneys in Bernstein and Gruhin, did not take any such precautions, but still received admonitions. The attorney in Van Dam (reprimand) was guilty of conduct for which an admonition would suffice, were it not for his prior three-year suspension. So, too, the misconduct in the censure case, Tobin, was more egregious than that presented here. Tobin named himself as the beneficiary in a will that he drafted. He also had a prior reprimand for misconduct that, although displayed after the drafting of the will in the censure matter, nevertheless showed that the will-drafting was not an isolated or aberrational ethics transgression.

We determine that a reprimand is sufficient discipline for respondent's imprudent action for several reasons: Fred was clearly closer to Bjorlo than he was to Redman, his own sister;

Bjorlo was only a contingent beneficiary; and, had any other attorney prepared Fred's will in the exact manner as respondent did, Bjorlo would likely have received everything in any event.

Members Wissinger and Zmirich voted to impose a censure. Member Stanton voted for a three-month suspension. Member Baugh did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Louis Pashman, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Roger J. Weil
Docket No. DRB 11-040

Argued: April 21, 2011

Decided: July 22, 2011

Disposition: Reprimand

Members	Disbar	Reprimand	Censure	Three-month Suspension	Did not participate
Pashman		X			
Frost		X			
Baugh					X
Clark		X			
Doremus		X			
Stanton				X	
Wissinger			X		
Yamner		X			
Zmirich			X		
Total:		5	2	1	1

Julianne K. DeCore
Chief Counsel