SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-218
District Docket No. XIV-2014-0116E

IN THE MATTER OF	:
ERIKA J. INOCENCIO	:
AN ATTORNEY AT LAW	:

Decision

Argued: January 19, 2017

Decided: April 19, 2017

Jason D. Saunders appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

This matter was before us on a recommendation for a reprimand filed by the District VIII Ethics Committee (DEC). The complaint charged respondent with violations of RPC 1.15(d) and R. 1:21-6 (recordkeeping), RPC 5.5(a)(2) (assisting a nonlawyer in the unauthorized practice of law), RPC 8.1(a) (making a false statement of material fact in connection with a disciplinary matter), and RPC 8.4(c) (conduct involving

dishonesty, fraud, deceit or misrepresentation). We determine to impose a censure.

Respondent was admitted to the New Jersey and New York bars in 2002, and to the Massachusetts bar in 2008. She has no prior discipline.

In her answer to the formal ethics complaint, respondent admitted to having violated RPC 1.15(d) and R. 1:21-6. Through her attorney, Glenn R. Reiser, she denied the remaining charges until, at the inception of the DEC hearing, she stipulated to having violated RPC 5.5(a)(2) and RPC 8.4(c). During the hearing, the Office of Attorney Ethics (OAE) withdrew the RPC 8.1(a) charge, as inapplicable to the facts.

This matter arose out of an Orange, New Jersey, real estate purchase by Lindwood Wade, the grievant. Wade's January 6, 2014 ethics grievance alleged that, as settlement agent for the transaction, respondent neglected post-closing tasks, such as paying off a second mortgage. Ultimately, Wade ceased cooperating with ethics investigators and did not appear at the DEC hearing. Respondent, thus, was the sole witness to testify at the hearing.

According to respondent, Wade was a "flipper," who purchased the Orange property as an investment. Respondent conceded that her name appeared on the HUD-1 settlement

statement used for the transaction, at "Section H," under the heading "Settlement Agent." She insisted, however, that an individual named Dennis Isaac, not she, had acted as settlement agent for the transaction. Isaac operated a business that provided "transitional mortgage refinancing" and conducted "short sales" for distressed homeowners. Isaac was not a licensed attorney, real estate agent, or title agent.[1] Respondent, however, had agreed to review documents in Isaac's real estate transactions, for a fee. Their relationship lasted for one year, from early 2013 to early 2014.

Respondent had known Isaac years earlier and, when they were reacquainted in early 2013, Isaac offered to teach her about real estate transactions. At the time, respondent had just resumed the practice of law after a two-year hiatus, and had opened a law office in Newark. Her only employment was as a part-time municipal prosecutor for the Township of Irvington. Respondent saw Isaac's offer as an opportunity to broaden her legal knowledge and to expand her business. Over the course of their one-year association, respondent was involved in ten to

[1] In 1995, the Supreme Court decided In re Opinion 26 of the Committee on the Unauthorized Practice of Law, 139 N.J. 323 (1995). The Court held that, within certain parameters, licensed title companies and real estate brokers may conduct residential real estate closings without an attorney, a practice that was common in the southern part of the state.

fifteen real estate transactions with Isaac, for which she received fees totaling $5,500.

In 2013, Isaac opened a checking account with Investors Bank for use as the escrow account for the transactions involving respondent. At that time, respondent was unaware that he had opened the account or that he and another individual, Sharon Arnette, were the signatories on it. Like Isaac, Arnette is not a licensed attorney, real estate agent, or title agent.

Isaac arranged for the Investors account checks to be prepared with the following accountholder information in the title:

ERIKA INOCENCIO, ESQ.
SETTLEMENT SERVICES, LLC.
ESCROW ACCOUNT
75 SOUTH ORANGE AVE. SUITE 211
SOUTH ORANGE, NJ 07079

[Ex.8,869.]

Respondent explained how she learned about the Investors account and Isaac's use of her name:

> There was a point where I saw a check, and that's when I realized it had my name on it. And, honestly, I, you know, asked him about it, it was -- it was concerning to me, but at no time did I think that he had opened a business in my name, I had never seen -- and I refer to it in all of my letters: Esquire Settlement Services. That's the name of the company. That's the name on the -- that was the name on the

door, that was the only name I knew it to be.

[T51-10 to 18.][2]

Despite the prominent placement of her name and attorney designation "Erika Inocencio, Esq." on the first line of the check, and "Escrow Account" on the second line below it, respondent took no action to have the account closed. She testified that she had interpreted the account title to reflect "Esquire Settlement Services" as the accountholder – not "Erica Inocencio, Esq."

Respondent did not attend the Wade real estate closing. She recalled reviewing documents, including a HUD-1 settlement statement, upon which her name appeared as "Settlement Agent" at Section H.[3] Respondent testified that, had she seen her name on the HUD-1, she would not have permitted Isaac to use it until her name was removed. Respondent was unsure whether she reviewed an earlier draft of the HUD-1 without her name on it or the final, fully executed HUD-1 containing her name, in

[2] "T" refers to the transcript of the November 17, 2015 hearing before the DEC.

[3] Additionally, line 1302 of the Wade HUD-1 shows $1,500 in "Buyer Legal Fees to Erika Inocencio" (Ex.8,888). Respondent did not testify about that entry at the DEC hearing.

which case she simply overlooked her name as settlement agent on the document.[4]

Respondent testified that she did not attend the closings in the matters with Isaac. Rather, at some point she would review Isaac's checks and disbursements against the HUD-1, to ensure that "whoever was supposed to be paid got paid" and that the transaction "zeroed out."[5] The record contains no evidence that Isaac disbursed funds improperly in any of the transactions or that any party or third person suffered a loss as a result of Isaac's and respondent's actions in these matters.

Respondent denied having prepared the deed in Wade's matter. Rather, Isaac prepared and filed it himself. In fact, respondent was unsure whether she ever reviewed it prior to the closing.

On the recording information sheet covering the deed, Isaac listed the return address for the recorded copy of the deed as

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[4] Although respondent was the named settlement agent, the final page of the HUD-1 contains Isaac's signature as "Closing Agent."
[5] The record does not disclose how respondent gained access to the cancelled checks. Respondent did not have access to the bank statements for the Investors account, as Isaac had them sent to his office in South Orange. Isaac paid respondent using checks drawn on the Investors account.

Although the information sheet came from respondent's own file, she testified that she had not seen it before the ethics investigation.

Respondent also testified that she had been unaware that the preparation of a deed amounted to the practice of law. Rather, she learned of that prohibition during the OAE's investigation.

RPC 1.15(d) and R. 1:21-6(a) require every attorney engaged in the private practice of law in New Jersey to maintain a compliant trust account and a business account in an approved New Jersey financial institution. Respondent listed Isaac's Investors checking account as her official trust account on her attorney registration statement for the years 2013 and 2014. She testified that, although she did not maintain her own attorney trust or business account at the time, she disclosed the existence of the Investors account because her name was associated with it, unaware, at the time, that it was not a conforming trust account:

> At the time I was told it was a trust account. I was told that it would be – it was sufficient for the transaction of – of real estate transactions. I did not further investigate to make sure that that was

true, accurate and that the account was appropriate.

[T99-3 to 9.]

Respondent did not identify the person who had misinformed her that the Investors checking account was a conforming trust account.

Respondent admitted that, by listing Isaac's Investors account on her attorney registration materials as her attorney trust account, she misrepresented the true nature of the account. In fact, the account could not have been her trust account because Isaac had opened it without her knowledge; she was not a signatory on the account; Isaac had all bank statements sent to his office address; and she had no control over the account. Respondent ultimately recognized, and stipulated at the hearing, that her conduct in this regard violated RPC 8.4(c).

On May 20, 2014, during the OAE investigation into the Wade transaction, and on the advice of ethics counsel, respondent opened her own trust and business accounts at Provident Bank.

In November 2014, respondent closed the Investors account. She testified that she would have done so sooner, but bank officials had informed her that she would not be able to obtain account records once the account was closed. Therefore, she

left it open in case she needed records for the ongoing OAE investigation.

In post-hearing briefs to the DEC, the parties advanced different sanctions. Citing In re Silber, 100 N.J. 517 (1985), respondent's counsel urged the DEC to impose a reprimand for respondent's misconduct. In that case, Silber's law clerk, who was a law school graduate awaiting the results of her bar examination, was sent to court with the client with instructions to answer the calendar call and to await Silber's arrival at court. Without Silber's knowledge, and against his instructions, the law clerk tried to negotiate a settlement in chambers with the judge and her adversary, and then appeared for the hearing on the record. Id. at 519. When Silber later learned what had occurred, he took no action to correct the record with the court; "even when Respondent received a copy of the proposed court order showing his law clerk as an authorized attorney, he did not contact the court to correct this misrepresentation. Instead he allowed the order to be signed and entered, perpetuating the misrepresentation." Id. at 520.

In fashioning the appropriate sanction, we considered that Silber had no prior discipline in fifteen years at the bar. In aggravation, however, Silber deliberately failed to take

corrective action, despite several opportunities to do so. Id. at 522.

In turn, the OAE sought the imposition of a censure, citing In re Hecker, 201 N.J. 263 (2011), where the attorney received a one-year suspension for lending his name to a collection agency, which then sent dunning letters on the attorney's letterhead so that it would appear that an attorney was involved in the debtor's account, a violation of RPC 5.5(a). In the Matter of Laurence Hecker, Docket No. DRB 09-372 (August 9, 2010) (slip op. at 81-83). In aggravation, Hecker had a prior six-month suspension in 1988 and a three-month suspension in 2010. Id. at 3-4.

The DEC accepted respondent's stipulated violation of RPC 5.5(a)(2) for assisting Isaac, a nonlawyer, in the unauthorized practice of law by permitting Isaac to use her name and attorney designation on the Investors account, and to perform duties that were reserved for attorneys, while allowing him to use her "entity name" as the settlement agent on the closing documents.

The DEC rejected, as not credible, respondent's explanation that the use of her name on the Investor account checks and on documents such as the Wade HUD-1 were innocent and the result of misinterpretation on her part. Rather, the

hearing panel found that the account checks clearly reflected that the account was in the name of "Erica Inocencio, Esq." and not "Erika Inocencio, Esq. Settlement Services." Indeed, the panel noted, respondent herself (falsely) identified the account on her annual registration statement as her trust account.

The DEC accepted respondent's stipulated failure to maintain a trust account in 2013 and early 2014, during which time she was engaged in the private practice of law, a violation of RPC 1.15(d) and R. 1:21-6.

Finally, the DEC accepted respondent's stipulation that she twice misrepresented to the Lawyers' Fund for Client Protection, for the years 2013 and 2014, that the Investors account was her own New Jersey trust account. Respondent did not open that account, had no signatory authority over it, and did not receive the bank statements, which were sent to Isaac in South Orange. Therefore, her claim that the Investors account was her own trust account was untrue, and a violation of RPC 8.4(c).

In mitigation, the panel concluded that respondent had not been motivated by malice, fraud, or profit. Rather, she was ignorant of the trust accounting rules and had very little experience in real estate law, relying instead on Isaac for his

real estate acumen. In addition, respondent had no prior discipline in ten years as an attorney.

The panel was divided over the appropriate sanction. The two attorney members recommended a reprimand, as had respondent. The public member recommended a censure, the sanction urged by the OAE:

> The Public Member would find that Respondent's acts were deliberate when she lied about her trust account on her Attorney Registration, which occurred over the course of two years. She would find that these acts are not ignorance, mistakes, oversights, or neglect. Additionally, she would find that Respondent's lies enabled a non-lawyer to act as a lawyer closing real estate, and to open an account in her name. The Public Member is not persuaded that because Respondent earned very little financially, that she is less responsible. The Public Member would find that Respondent knew and understood what she was doing.
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> [HPR18.][6]

The panel was unanimous in its recommendation that respondent be required to complete twelve hours of continuing legal education (CLE) in the area of ethics over the next two years, in addition to the mandatory CLE requirements.

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6 HPR refers to the hearing panel report, dated May 10, 2016.

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

RPC 1.15(d) and R. 1:21-6 require that attorneys engaged in the private practice of law maintain a conforming trust and business account in an approved New Jersey financial institution. Although respondent listed Isaac's Investors checking account as her official trust account on her attorney registration statement for the years 2013 and 2014, she acknowledged that she had not maintained her own attorney trust and business accounts during that time. She claimed to have listed the Investors account only because her name was associated with it, not to mislead authorities. Respondent's failure to maintain proper trust and business accounts violated RPC 1.15(d) and R. 1:21-6.

It is clear from respondent's actions that she assisted Isaac in the unauthorized practice of law. Respondent permitted Isaac to operate the Investors account, which masqueraded as respondent's own attorney account, and also assisted Isaac by her involvement in transactions in which he performed attorney tasks, including his preparation of a deed in the Wade transaction. Respondent's misconduct in this respect violated RPC 5.5(a)(2).

By listing the Investors account as her attorney trust account on her 2013 and 2014 attorney registration statements, respondent misrepresented to attorney registration authorities that the account belonged to her and that it complied with the rules governing attorney trust accounts in New Jersey. Respondent's claim that someone told her that the Investors account served as a trust account is not credible. The account never belonged to her. Isaac opened it, maintained it, and had all bank statements sent to him. In fact, respondent had no actual accountholder association with that account. Thus, we conclude that respondent knew, from the moment she first learned of it, that the Investors account was not a bona fide attorney trust account. Her declarations to the contrary on the 2013 and 2014 attorney registration statements were in violation of RPC 8.4(c).

We note respondent's claim that she misunderstood the nature of the Investors account. In the Wade transaction, "Erika Inocencio, Esq." appeared under the heading "Settlement Agent," at Section H of the HUD-1 settlement statement. Likewise, at line 1302 of the HUD-1, there was a $1,500 entry for "Buyer Legal Fees to Erika Inocencio." A reasonable person reviewing the HUD-1 would conclude from this information that respondent was the buyer's attorney – in this case, Wade's

attorney – and that she was the designated settlement agent. Yet, at the hearing, rather than take ownership of these obvious facts, respondent attempted to deflect responsibility for these misrepresentations with explanations that made little sense.

Respondent denied knowledge that Isaac had opened a checking account, using her name, to handle the real estate transactions that they worked on together. When she did learn of it, she claimed to have misinterpreted the accountholder title that appeared on the Investors account checks.

It is clear to us that Isaac opened the Investors account checks with respondent's name to convey to parties to real estate transactions the false impression that it was the escrow account of "Erika Inocencio, Esq." Although Isaac opened that account without respondent's knowledge, when she learned about it (at the latest, when she reviewed canceled checks from their first closing in 2013), she took no corrective action to have the bogus account closed. Moreover, respondent then listed it as her trust account on not one, but two, successive annual attorney registration statements. Thereafter, she participated in nine to fourteen more real estate transactions with Isaac, who continued to use her name and her assistance.

In summary, respondent violated the recordkeeping rules, assisted a nonlawyer in the unauthorized practice of law, and

made misrepresentations to attorney registration authorities in two annual registration statements, violations of RPC 1.15(d) and R. 1:21-6, RPC 5.5(a)(2), and RPC 8.4(c), respectively.

In cases involving assisting a nonlawyer in the unauthorized practice of law, often found along with other violations such as fee-sharing with a nonlawyer, the discipline has varied widely, from an admonition to a long-term suspension, depending on the nature and pervasiveness of the misconduct, and the presence of other violations or prior discipline. See, e.g., In the Matter of Geno Saleh Gani, DRB 04-372 (January 31, 2005) (admonition for attorney who contracted with a Texas company, ALS, to develop a New Jersey practice preparing living trusts; the attorney assisted the company's employees in the unauthorized practice of law when permitting them to obtain information and to secure fees when people expressed an interest in securing Gani's services; although Gani spoke with the clients and addressed their trust-related questions, he did not inform them that those individuals who had gathered information were associated with ALS; the attorney also engaged in attorney advertising violations and shared legal fees with the nonlawyer company; significant mitigation included an unblemished sixteen-year career; the attorney's contrition, remorse and cooperation; his cessation of the advertising, termination of the

relationship with ALS, and refusal to accept referrals from New Jersey clients; the lack of harm to clients; the passage of time; and the short duration of the practice); In the Matter of Morris J. Kurzrok, Docket No. DRB 95-052 (April 5, 1995) (admonition for attorney who improperly accepted tax appeal forms through a nonlawyer tax expert, permitting him to prepare appeal forms from a decision of the city tax board; the attorney then reviewed and signed the forms and appeared before the tax board on the taxpayer's behalf); In re Ezon, 172 N.J. 296 (2002) (reprimand for attorney who permitted his father, an attorney who was licensed in New York, but had been disbarred in New Jersey, to present himself as an attorney in New Jersey for a common client in New Jersey litigation; the attorney thereby misled the court, the parties, and the other attorneys in the case; in mitigation, the conduct was limited to one matter and the attorney had no discipline; the reprimand was imposed solely because the misconduct occurred while the attorney was assisting his own father); In re Gottesman, 126 N.J. 376 (1991) (reprimand for attorney who aided a nonlawyer paralegal in the unauthorized practice of law by allowing the paralegal to advise clients on the merits of claims and permitting the paralegal to exercise sole discretion in formulating offers of settlement and in accepting and rejecting them; the attorney also improperly

divided a percentage of legal fees with the paralegal); In re Silber, supra, 100 N.J. 517 (reprimand for attorney who sent his law clerk to court in a matrimonial matter to answer the calendar call and await the attorney's arrival in court; instead, the law clerk tried to negotiate a settlement and then appeared at the hearing; thereafter, the attorney found out what the clerk had done, but took no corrective action with the court; in mitigation, the attorney had no prior discipline in fifteen years at the bar; in aggravation, he deliberately took no action, despite opportunities to do so); In re Malat, 177 N.J. 506 (2003) (three-month suspension for attorney who entered into an arrangement with a Texas corporation to review various estate-planning documents it had prepared on behalf of clients, for which the corporation paid him; prior reprimand and three-month suspension); In re Chulak, 152 N.J. 553 (1998) (three-month suspension where the attorney allowed a nonlawyer to prepare and sign pleadings in the attorney's name and to be designated as "Esq." on his attorney business account; the attorney then misrepresented to the court his knowledge of these facts); In re Carracino, 156 N.J. 477 (1998) (six-month suspension where the attorney entered into a law partnership agreement with a nonlawyer, agreed to share fees with the nonlawyer, engaged in a conflict of interest, displayed gross

neglect, failed to communicate with a client, engaged in conduct involving misrepresentation, and failed to cooperate with disciplinary authorities); In re Hecker, supra, 201 N.J. 263 (one-year suspension for attorney who loaned his name to VCollect, a collection agency, and permitted its employees to send out "thousands and thousands" of collection letters on the attorney's letterhead, thereby assisting another in the unauthorized practice of law, a violation of RPC 5.5(a)(2); the attorney also violated RPC 8.4(c) by misrepresenting that he was VCollect's attorney in charge of its collection work; prior six-month suspension and three-month suspension); and In re Rubin, 150 N.J. 207 (1997) (one-year suspension in a default matter where the attorney assisted a nonlawyer in the unauthorized practice of law, improperly divided fees without the client's consent, engaged in fee overreaching, violated the terms of an escrow agreement, and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation).

Respondent urged us to impose a reprimand based on Silber, supra. That case involved a single matter wherein the attorney assisted his paralegal in the unauthorized practice of law by ratifying behavior after the fact. Silber was unaware of the conduct when it occurred. Here, however, respondent permitted

Isaac to perform attorney functions for a year, in more than a dozen different matters.

The OAE urged us to impose a censure, citing Hecker, supra (one-year suspension). Hecker, however, was involved in more serious misconduct, including having permitted a collection company to use his name in "thousands and thousands" of matters. Additionally, Hecker had prior six-month and three-month suspensions, a serious aggravating factor not present here.

The two cases in which admonitions were imposed, Gani and Kurzrok, involve less serious conduct than that displayed by respondent. In Gani, nonlawyers simply gathered necessary information and fees from people who expressed an interest in a living trust. Gani spoke with them and answered their individual needs. In Kurzrok, on two occasions, the attorney permitted a nonlawyer tax expert to prepare tax appeal forms, but the attorney then represented the taxpayer before the tax board.

Ezon and Gottesman, too, involve less serious conduct than respondent's. In Ezon, the attorney succumbed to pressure from his father, a disbarred New Jersey attorney, to permit his involvement in a single matter. The attorney in Gottesman permitted a paralegal to advise clients about the merits of their claims and to accept or reject settlement offers. Gottesman, however, did not engage in misrepresentations or

permit the paralegal to draft legal documents or access attorney bank accounts, elements present in this matter.

Respondent essentially gave Isaac "the keys" to a purported attorney trust account bearing her name. From there, he was free to completely conduct real estate transactions in which he held tens of thousands, if not hundreds of thousands of dollars belonging to unsuspecting lenders, borrowers, and sellers. Respondent had no control over actions that he might have taken in those matters. Her only review of them occurred at some point later, when reviewing Isaac's checks and disbursements against the HUD-1 in the matters.

Respondent's actions are akin to those of the attorney in Chulak, who received a three-month suspension. Similar to respondent, Chulak allowed a nonlawyer acquaintance, Paul Falcon, to prepare and sign legal documents in the attorney's name. Chulak also permitted Falcon to be designated as "Esq." and to hold himself out as an attorney on Chulak's business account checks. In the Matter of Michael J. Chulak, Docket No. DRB 97-236 (November 18, 1997) (slip op. at 2). Like respondent, Chulak claimed to be unaware of the nonlawyer's actions. Similarly, Chulak made misrepresentations, to a court, disavowing any knowledge about pre-printed business account checks that bore Falcon's name, and misrepresenting to the court

that he was unaware of Falcon's involvement in a litigated matter. Id. at 5. Chulak's suspension pre-dated the advent of the censure as a form of discipline in New Jersey.

The longer term suspension cases are distinguishable as they involve additional, more serious misconduct not present here (Carracino and Rubin) or prior discipline (Hecker).

There is also the additional element of respondent's recordkeeping violation based on her failure to maintain a trust and business account. Simple recordkeeping violations, without more, have yielded admonitions. See, e.g., In the Matter of Eric Salzman, DRB 15-064 (May 27, 2015); In the Matter of Leonard S. Miller, DRB 14-178 (September 23, 2014); and In the Matter of Sebastian Onyi Ibezim, Jr. DRB 13-405 (March 26, 2014).

Finally, we consider mitigating and aggravating factors. In mitigation, respondent has no prior discipline and there is no evidence that anyone has lost funds as a result of her actions. In aggravation, respondent's misconduct took place over a significant period of time – one year – during which she took no steps to address obvious improprieties. We conclude that the DEC rightly rejected, as not credible, respondent's explanation about Isaac's use of her name. Her name appeared in the accountholder title on the Investors account checks, as settlement agent on Wade's HUD-1, and on the information sheet

for his deed – all clear indicia of an attorney involvement greater than that to which respondent ultimately stipulated at the DEC hearing.

We find that, on balance, a reprimand is insufficient to address the totality of respondent's misbehavior. This case is similar to Chulak, a case in which a three-month suspension was meted out when the next upward sanction after reprimand was a three-month suspension. We agree with the hearing panel's dissenting member and vote to impose the next greater sanction available today – a censure.

In addition, we require respondent to complete twelve hours of CLE over the next two years, in addition to the annual CLE requirements. Two hours of the additional CLE should be in the area of trust accounting.

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
Bonnie C. Frost, Chair

By: Ellen A. Brodsky
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Erika J. Inocencio
Docket No. DRB 16-218

Argued: January 19, 2017

Decided: April 19, 2017

Disposition: Censure

Members	Censure	Recused	Did not participate
Frost	X		
Baugh	X		
Boyer	X		
Clark	X		
Gallipoli	X		
Hoberman	X		
Rivera	X		
Singer	X		
Zmirich	X		
Total:	9		

Ellen A. Brodsky
Chief Counsel