SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 07-132

IN THE MATTER OF	:
HARRY J. LEVIN	:
AN ATTORNEY AT LAW	:

Decision

Argued: July 19, 2007

Decided: September 6, 2007

Jeff J. Horn appeared on behalf of the District IIIA Ethics Committee.

Frederick J. Dennehy appeared on behalf of respondent.

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

This matter came before us as a post-hearing appeal from the District IIIA Ethics Committee's (DEC) dismissal of a formal ethics complaint filed against respondent. Following a review of the appeal, we determined to schedule the matter for oral argument.

The complaint charged that respondent violated RPC 3.4 (presumably section (g)) (threatening to bring criminal charges

to obtain an unfair legal advantage in a civil matter) and RPC 8.4(d) (conduct prejudicial to the administration of justice). The RPC 3.4(g) charge was based on a threatening letter that respondent sent to a former client, who had filed an ethics grievance against him. The RPC 8.4(c) charge stemmed from the grievant's allegation that respondent intimidated or coerced her and her son to withdraw the grievance.[1]

We determine to dismiss the RPC 3.4(g) charge and to reprimand respondent for attempting to influence the grievant and her son to withdraw the grievance and for using extremely discourteous and intimidating language in a letter to the grievant.

Respondent was admitted to the New Jersey bar in 1983. He has no prior discipline.

Linda DiBella, the grievant/appellant, retained respondent to represent her in connection with injuries sustained in an April 2002 automobile accident. Her son, Robert, a passenger in the car, retained separate counsel. Respondent settled DiBella's matter for $110,000, in October 2004, on the day of the trial call.

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[1] The DEC investigator found without merit the grievant's allegations that respondent had failed to return to her funds set aside for the payment of medical bills and to follow her directions about such payments.

Thereafter, DiBella questioned respondent's handling of medical liens, for which he had initially escrowed a small portion of the settlement proceeds. DiBella testified, at the DEC hearing, that her own records showed that her doctors had been paid twice: once by Medicare and then again by her insurance company. DiBella claimed that, when she brought that fact to respondent's attention, he did nothing to correct the situation. She concluded, therefore, that respondent had misappropriated the escrow funds.

On March 22, 2005, DiBella filed an ethics grievance against respondent.[2] The grievance alleged that respondent had not released to DiBella the settlement funds escrowed for Medicare and had not provided her with copies of bills and canceled checks, despite her several requests.

As discussed more fully below, several weeks later DiBella withdrew the grievance, while she was in the process of negotiating the escrow issue with respondent. Unhappy with respondent's proposed resolution of the escrow issue, DiBella asked the DEC to reactivate the grievance.

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[2] The complaint erroneously refers to the grievance as a 2004 grievance.

Respondent, admittedly angered upon receiving the grievance for a second time, immediately fired off an August 29, 2005 letter to DiBella:

> I am in receipt of the second ethical complaint you have filed against me. There is absolutely no basis for this filing, it is frivolous and intended simply to harass. As soon as the complaint is dismissed by the ethics committee, which it is sure to be, I will file suit against you and your husband. I am going to also explore whether filing a false claim has other recourse as well. I am also interested in the role your husband and son had in this action.
>
> Not only have I attempted to explain to you the final disposition in this matter, both my partners have spoken and written to you on numerous occasions. For some reason you refuse to accept the fact that we do not owe you any money, that Dr. Sachs was properly paid and if there is any issue you have with Medicare, it is between you and them.
>
> It is obvious to me that there is something wrong with you. I do not know if it's a function of some medical condition you have or some other emotional limitation, but I am not going to stand by while you try to blemish my reputation. Filing an ethics complaint has serious implications and your baseless assertions will be your undoing.
>
> I am also exploring seeking court intervention to have you examined by a physician and psychiatrist. If you are suffering from some ailment that is affecting your thinking, I want that known by the ethics committee as well.
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> [Ex.C-4.]

In a certification attached to his answer to the formal ethics complaint, respondent offered the following explanation for his letter:

> When I received the second, baseless ethics complaint, I admit to being incredibly frustrated. I kept my promise to her and her son to fully investigate and reconfirm each and every step in the post-litigation process. In order to ensure that my promise was being kept, I enlisted the help of my partners, Colleen Cyphers and Claire Calinda hoping that they could be successful. It was a fool's mission, as there was nothing that was going to derail Ms. DiBella.
>
> I had represented her in an exemplary fashion with great results and here she was claiming I had done something wrong. She was coming after me in the same manner as she boasted about regarding others. I was not going to tolerate being falsely accused.
>
> Turning to the letter, which apparently is the focus of this matter, it simply stated that I would take action, ONLY AFTER I WAS EXONERATED. I did not threaten any action unless or until that time. I wanted her to understand that I was not simply going to succumb to her accusations. I wanted her to understand that she cannot simply hurl accusations that can have an impact on one's career.
>
> In terms of the comment about her medical condition, I only knew about it because she and her son would frequently speak about it. The status of her treatment had an impact on the accident case resulting in delays. The condition and the impact the treatments were having on her were both openly communicated and understandable.
>
> I also mentioned it because I wanted to let her know that I had concerns about her condition and would bring that to the attention of the Committee. I also note that RPC 1.14 directs a lawyer to communicate if

> there is a belief that the client is impaired.
> I have now invested scores of hours in trying to have Mrs. DiBella understand the post litigation activities and now defending myself. While the letter certainly demonstrates extreme frustration, it is not unethical. In fact, it is no different than letters lawyers write every minute of the day, advising the claimant of a vociferous defense to baseless charges.
> Please consider this. What was there to accomplish by filing an ethics complaint? The case was over, we followed each and every one of her instructions and we had demonstrated to her on several occasions that our post litigation actions were justified and appropriate; yet for some reason she filed the complaint. I suggest the filing was simply indicative of how some people live their lives. My unblemished record should not be tarnished as a result.
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> [Rc¶17 to ¶23.][3]

Less than a month later, on September 20, 2005, DiBella filed an "amendment to grievance" to include a reference to an April 2005 conversation between respondent and Robert and a claim that respondent had pressured her to drop the March 22, 2005 grievance.

At the DEC hearing, DiBella testified that she had been present at Robert's office, in April 2005, when respondent and Robert had discussed her grievance over the telephone. She

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[3] Rc refers to respondent's certification, attached to his answer.

recalled hearing respondent through the earpiece of Robert's office telephone, "yelling and screaming and carrying on" about the grievance. She also recalled that respondent had suggested the contents of DiBella's letter to the DEC, announcing her intention to withdraw the grievance.

DiBella also testified about respondent's August 29, 2005 letter. She asserted that, as a child, she had witnessed the hauling away of a neighbor, in a straightjacket: "I'm from that era that people that had money and political connections did have people come with straightjackets and take you away." DiBella stated that she had never had a mental problem and found respondent's suggestion that she be tested deeply disturbing. She also expressed her distress over the letter's reference to other medical problems, which she interpreted to be her then-ongoing battle with cancer. According to DiBella, respondent "constantly" reminded her that her cancer could adversely affect the recovery in her accident case. She recalled that, on one occasion, he had become so upset with her that he had "pulled out of his pocket a whole bunch of needles, and he goes, because of clients like you, that's why I have to take these." Respondent later denied this conduct, but conceded that he required insulin shots for the treatment of diabetes.

Robert DiBella, too, testified at the DEC hearing. He stated that respondent had represented him from 1999 to early 2005, in matters unrelated to the auto accident, and that they had developed "a friendship and a bond" over the years.

Robert recalled the April 2005 telephone conversation with respondent about withdrawing his mother's March 22, 2005 grievance. According to Robert, respondent cursed at him, screamed, and used the "f" word in his plea for help. Robert became concerned when respondent also mentioned a federal case that he was handling for Robert. Because the case had nothing to do with his mother's, Robert concluded that respondent would not give the case the attention it deserved, unless his mother withdrew her grievance. Robert then asked his mother, and she agreed, to withdraw the March 22, 2005 grievance.

For his part, respondent admitted speaking to Robert "three or four times" on the April 2005 day in question. He recalled being upset and feeling betrayed by DiBella, for whom he had obtained good results. Therefore, he tried to convince Robert that the grievance was unfounded. He even suggested language for a letter to ethics authorities about dismissing the grievance. He denied, however, cursing at Robert, noting that it would not have been a good way to obtain help. He also denied Robert's

suggestion that he would have lessened his efforts in Robert's case, if the grievance were to go forward.

The DEC hearing also focused on respondent's February 2006 retention of Lance LeBaron, a retired local policeman turned private investigator, to "dig up information" on the DiBellas. Respondent admittedly sought to discredit the DiBellas because, "as a family," they had "constantly bragged about getting over on other people and filing lawsuits and claims against others." Respondent asserted that he did not want to fall victim to them as well.

Bettysue Bisbal, Robert's fiancée, testified that she had come home, on February 14, 2006, to find LeBaron's business card wedged in her door. She thought Robert was in trouble and discussed the card with him. From the DiBella home, where DiBella lived with her husband and Robert, Bisbal tape-recorded her conversation with LeBaron. The tape and transcript were presented at the DEC hearing. That conversation was noteworthy only because of LeBaron's reference to his purpose in contacting Bisbal, which he disclosed as being on account of respondent: "trying to find out what's going on, and it's not a pretty picture that's been painted."

LeBaron testified that he had been referred to respondent by another attorney and that respondent had retained him to

conduct a computer-based investigation of the DiBellas. He was familiar with the DiBella family, recalling that he had answered police calls to their house, when he was still on the force. LeBaron stated that it had been his, not respondent's, idea to visit Bisbal's home. He stated that they had not discussed a prohibition against making personal contact with anyone related to his investigation.

LeBaron also remembered that, a few days after his visit to Bisbal's house, respondent had instructed him to stop working on the case. All told, he had worked on the case for less than one week, in February 2006, for which respondent had paid him a total of $1,500.

Respondent testified that LeBaron's name had been referred to him by another attorney and that he did not know LeBaron "from a hole in the wall," prior to February 2006. Respondent claimed that he had retained LeBaron to conduct a discrete computer search. Respondent stated that he needed a private investigator to search public records for him because the DiBellas had bragged about being litigious and filing claims against people. He also wanted to use the same lawyer skills against the DiBellas that he had used so effectively to litigate their claims for them.

Respondent denied knowing about LeBaron's visit to Bisbal's house, until he received a call from the DEC investigator to find out if he had authorized a private investigator to contact Bisbal. Respondent emphatically denied that he had done so, stating that he had authorized LeBaron to search public record databases only. Thereafter, respondent sought to distance himself from LeBaron and ordered him to cease working on the file.

Respondent's former associate, Laura Nunnick, also testified at the DEC hearing. She stated that she had worked directly with DiBella on her accident case, between 2003 and 2005. She described DiBella as one of the most difficult clients she had ever met. According to Nunnick,

> It would be one day we would talk, and she'd want something explained to her, I'd explain it. She would be fine. And then the next day she'd call on the same issue irate, screaming, demanding she wanted to speak to [respondent]. I'd explain he was out of the office and he'd get back to her at night, and it was never acceptable.
> And then we could go two days later and she'd be fine. I mean I never knew who I was going to have on the phone.
>
> [T172-5 to 14.][4]

[4] T denotes the transcript of the DEC hearing on September 7, 2006.

Nunnick also recalled that DiBella had claimed, in one conversation, to be a "witch." Nunnick had asked DiBella if she was joking and she had replied that she was not. DiBella had boasted that she "could read people's minds, and cast spells." At the DEC hearing, DiBella discounted that notion, claiming that she had been joking with Nunnick.

The DEC found DiBella's and Robert's testimony not credible. The DEC concluded that, although respondent's letter had been "bothersome and unprofessional," its contents and tone had not risen to the level of unethical conduct. The DEC dismissed the complaint, but recommended that respondent attend an "Ethics or Professionalism class."

The DEC considered, in mitigation, that respondent had drafted the letter in "anger and frustration and was unclear in what he had in mind and what he hoped to achieve in writing the letter." The DEC noted that the letter did not seek to influence the ethics process and did not contain foul language.

Following a de novo review of the record, we find that the evidence clearly and convincingly establishes that respondent's conduct was unethical.

Although credibility issues abound, the disposition of the charges rests not on credibility issues, as urged by respondent and his ethics counsel, but on several overt acts by respondent,

all done in efforts to twice stifle the ethics grievance against him. Unfortunately for respondent, he launched the first salvos in what he perceived as a litigation strategy, one that has no place in the disciplinary system. We find that he violated the Rules of Professional Conduct in the process.

At the outset, we note that the parties in this disciplinary matter are far from being free of blame. On the one hand, respondent set about to influence DiBella and her son through inappropriate contacts with Robert, to discredit them through a private investigation, and to intimidate DiBella by means of an outrageous letter to her. On the other hand, DiBella and Robert set out to portray respondent as a "hothead" who stole from them, turned on them, cursed and screamed at them over the telephone, and badgered the family with a private investigator. They claimed an ill-fitting fragility as they sought the disciplinary system's redress for respondent's alleged wrongdoing. Nevertheless, their credibility aside, respondent's unethical acts speak for themselves.[5]

Respondent concededly contacted Robert while the grievance was pending, in April 2005. Over the course of four telephone

[5] Nunnick stood head and shoulders above the other witnesses, in terms of credibility. She testified without any apparent ulterior motive whatsoever.

conversations in a single day, respondent convinced Robert to obtain his mother's withdrawal of her grievance. Respondent went so far as to recommend specific language for inclusion in the withdrawal letter to the DEC. His conduct in this regard was prejudicial to the administration of justice, a violation of RPC 8.4(d).

Next, respondent wrote a letter to DiBella vowing to "file suit" against her and her husband (who had nothing to do with the grievance), after the dismissal of the grievance. Yet, R. 1:20-7(f) states, in relevant part, that "[g]rievants in ethics matters . . . shall be absolutely immune from suit, whether legal or equitable in nature, for all communications, including testimony . . . to the . . . ethics committees . . . and their lawfully appointed designees and staff." Thus, respondent could not have filed suit against DiBella, even if her grievance were found to be without merit. Respondent knew or should have known about DiBella's immunity. "Lawyers are expected to be fully versed in the ethics rules that regulate their conduct. Ignorance or gross misunderstanding of these rules does not excuse misconduct." In re Berkowitz, 136 N.J. 134, 147 (1994).

By contrast, DiBella did not know that respondent could not sue her or her husband. She had every reason to be intimidated by respondent's threat that her filing of a "baseless [grievance

would] be [her] undoing." Respondent also threatened to explore whether DiBella's filing of a false claim had recourse beyond the ethics system. The only inference to be drawn was that respondent's pledge to sue DiBella and her husband was intended to either frighten or bully her into abandoning her grievance.

One of the harshest treatments in respondent's letter related to his plan to seek "court intervention" to have DiBella examined by both a physician and a psychiatrist. Although respondent claimed that he sought only to clear his name, we are hard-pressed to accept such a benign purpose on his part. Indeed, the time for respondent to seek to "clear his name" would have been during the discovery phase of the ethics proceeding, rather than in a letter to the grievant immediately on being notified of the filing of the grievance. We find that the circumstances in the aggregate and respondent's choice of words inevitably lead to a path paved with ill-purposes, including intimidation, retaliation, and offers of ultimatums.

Moreover, when a lawyer announces to a lay person that the lawyer will petition the court for the appointment of a psychiatrist to evaluate the lay person's sanity, the lay person has every reason to believe that the lawyer's statement is based on legal training and experience and that, consequently, the result sought by the lawyer will be somewhat automatic.

The complaint alleged that respondent's letter violated RPC 3.4(g), which makes it unethical to threaten to file criminal charges to gain an advantage in a civil matter. We find no violation of that rule. Although the letter threatened DiBella and her husband with a suit and other possible legal action, it did not specifically say "criminal" action. We, therefore, dismiss that charge.

More properly, respondent's letter violated RPC 3.2, which requires attorneys to treat with courtesy and consideration all persons involved in the legal process.[6] Respondent's letter also violated RPC 8.4(d) because of his intimidating tactics toward DiBella to make her discontinue the grievance process.

As to respondent's retention of LeBaron's services, we find no clear and convincing evidence that respondent had authorized or was aware of Lebaron's investigative methods. Respondent testified, and LeBaron agreed, that he had hired LeBaron to conduct a computer-based investigation of the DiBellas. Hopefully,

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[6] Although the complaint does not cite RPC 3.2, the issue of the discourteous character of respondent's letter was fully litigated below. In fact, the hearing panel report refers to this rule. Because the record contains clear and convincing evidence of this violation, we deem the complaint amended to conform to the proofs. R. 4:9-2; In re Logan, 70 N.J. 222, 232 (1976).

respondent's purpose was solely to attempt to assail the DiBellas' credibility during the ethics investigation/hearing, in a way that is appropriate in the context of litigation or similar proceeding.

Respondent's ethics counsel has furnished us with two legal briefs, one dated January 25, 2007, having been filed in the ethics appeal, and the other dated July 9, 2007, filed for this matter. Both briefs focus not on respondent, but on the actions of DiBella and Robert, who are cast as incredible witnesses.

Counsel portrays respondent as a fine litigator who was deeply hurt by these two clients, both of whom turned on him after the representations. According to counsel, it was this personal hurt and respondent's suspicion that they were involving him in a sort of "sport" that spurred respondent to act in the manner that he did. Counsel also argued that the RPCs are inapplicable to respondent's conduct.

We understand respondent's frustration with what he perceived to be an about-face after DiBella's accident case was concluded. We also understand any innocent attorney's indignation at being accused of ethics improprieties that the attorney denies. We note that respondent enjoyed an unblemished disciplinary record for twenty-two years, prior to this incident. We are deeply troubled, however, by the strategy that respondent employed to "clear his name." And although he

explained, in the certification attached to his answer, that the August 2005 letter was an impulsive reaction to his "extreme frustration" at DiBella's "baseless ethics complaint," not once in the certification, drafted after he had had an opportunity to reflect on his conduct, did he acknowledge that the letter was improper. In fact, the only sorrow that respondent has expressed relates to the scrutiny of his actions in the course of this disciplinary proceeding.

Disrespectful or insulting conduct to persons involved in the legal process generally leads to an admonition or a reprimand. See In re Gahles, 182 N.J. 311 (2005) (admonition for attorney who exhibited rude behavior toward the opposing party (her client's wife) by calling her a "con artist," "crazy," a "liar," and a "fraud," and made comments such as "this is a person who cries out to be assaulted," and "somebody has to, like, put her in jail or put her in the loony bin;" mitigating factors were (1) that the attorney's conduct, although reproachable, was not intended to abuse or intimidate the opposing party, but to apprise the new judge in the case – who was unfamiliar with the case history – of what the attorney perceived to be that party's abnormal and defiant behavior throughout the lengthy, contentious matrimonial matter; (2) that the attorney's statements were made in the heat of oral argument

on a motion that involved crucial issues; and (3) that the attorney's exaggerated reactions may have been prompted by memories of her own, difficult divorce case); In the Matter of Alfred Sanderson, DRB 01-412 (2002) (admonition imposed on attorney, who, in the course of representing a client charged with DWI, made discourteous and disrespectful communications to the municipal court judge and to the municipal court administrator; in a letter to the judge, the attorney wrote: "How fortunate I am to deal with you. I lose a motion I haven't had [sic] made. Frankly, I am sick and tired of your pro-prosecution cant;" the letter went on to say, "It is not lost on me that in 1996 your little court convicted 41 percent of the persons accused of DWI in Salem County. The explanation for this abnormality should even occur to you."); and In the Matter of John J. Novak, DRB 96-094 (1996) (admonition for attorney who engaged in a verbal exchange with a judge's secretary; the attorney stipulated that the exchange involved "loud, verbally aggressive, improper and obnoxious language" on his part); In re Swarbrick, 178 N.J. 20 (2003) (reprimand case; in three matters, the attorney engaged in conduct intended to disrupt a tribunal; the attorney made numerous statements, in front of the jury, that the judge was unfair and prejudiced; the attorney also announced the time more than 130 times during a jury trial;

prior private reprimand for similar conduct); In re Geller, 177 N.J. 505 (2003) (reprimand for attorney who filed baseless motions accusing two judges of bias against him; failed to expedite litigation and to treat with courtesy judges (characterizing one judge's orders as "horseshit," and, in a deposition, referring to two judges as "corrupt" and labeling one of them "short, ugly and insecure"), his adversary ("a thief"), the opposing party ("a moron," who "lies like a rug"), and an unrelated litigant (the attorney asked the judge if he had ordered "that character who was in the courtroom this morning to see a psychologist"); failed to comply with court orders (at times defiantly) and with the disciplinary special master's direction not to contact a judge; used means intended to delay, embarrass or burden third parties; made serious charges against two judges without any reasonable basis; made a discriminatory remark about a judge; and titled a certification filed with the court "Fraud in Freehold"; in mitigation, it was considered that the attorney's conduct occurred in the course of his own child-custody case, and that he had an unblemished twenty-two-year career, was held in high regard personally and professionally, was involved in legal and community activities, and taught business law); In re Milita, 177 N.J. 1 (2003) (attorney reprimanded for writing an insulting letter to his

client's former paramour – the complaining witness in a criminal matter involving the client; an aggravating factor was the attorney's prior six-month suspension for misconduct in criminal pretrial negotiations and for his method in obtaining information to assist a client); In re Solow, 167 N.J. 55 (2001) (attorney who engaged in intimidating and contemptuous conduct towards two administrative law judges received a reprimand; in particular, the attorney filed approximately one hundred motions seeking one of the judge's disqualification on the basis that he was blind and, therefore, unable to observe the claimant or review the documentary evidence; the motion papers repeatedly referred to the judge as "the blind judge"; prior admonition); In re Hartman, 142 N.J. 587 (1995) (attorney reprimanded for intentionally and repeatedly ignoring court orders to pay opposing counsel a fee and, in a separate case, engaging in discourteous and abusive conduct toward a judge in an attempt to intimidate the judge into hearing his client's matter that day); In re Lekas, 136 N.J. 515 (1994) (in the midst of a trial unrelated to her client's matter, the attorney sought to withdraw from the client's representation; when the judge informed her of the correct procedure to follow and asked her to leave the courtroom because he was conducting a trial, the attorney refused; the judge repeatedly asked her to leave

because she was interrupting the trial by pacing in front of the bench during the trial; ultimately, the attorney had to be escorted out of the courtroom by a police officer; the attorney struggled against the officer, grabbing onto the seats as she was being led from the room; the attorney was reprimanded); In re Stanley, 102 N.J. 244 (1986) (reprimand imposed on attorney who engaged in shouting and other discourteous behavior toward the court in three separate cases; the attorney's "language, constant interruptions, arrogance, [and] retorts to rulings displayed a contumacious lack of respect. It is no excuse that the trial judge may have been in error in his rulings."); and In re Mezzacca, 67 N.J. 387 (1975) (attorney referred to a departmental review committee as a "kangaroo court" and made other discourteous comments; reprimand issued).

That respondent's letter was discourteous is unquestionable. Moreover, it contained threats of lawsuits and of court-ordered psychiatric examinations, threats that had the obvious purpose of frightening DiBella into withdrawing her grievance.

Attorneys who have attempted to have a grievance withdrawn have received either an admonition or a reprimand. In 1992, an attorney who prepared a "Payment Affidavit and Cash Receipt" intended to force his client to withdraw all ethics grievances

After considering the nature of respondent's conduct, measured against the aggravating and mitigating factors, we determine that a reprimand is sufficient discipline in this case.

Vice-Chair Pashman and Member Boylan 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
William J. O'Shaughnessy, Esq.

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Harry J. Levin
Docket No. DRB 07-132

Argued: July 19, 2007

Decided: September 6, 2007

Disposition: Reprimand

Members	Suspension	Reprimand	Admonition	Disqualified	Did not participate
O'Shaughnessy		X			
Pashman					X
Baugh		X			
Boylan					X
Frost		X			
Lolla		X			
Pashman		X			
Stanton		X			
Wissinger		X			
Total:		7			2

Julianne K. DeCore
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Chief Counsel