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SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 06-195  
District Docket No. XIV-06-218E

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IN THE MATTER OF  
WILLIAM F. SWEENEY  
AN ATTORNEY AT LAW

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Decision

Argued: September 21, 2006

Decided: November 16, 2006

Richard J. Engelhardt appeared on behalf of the Office of Attorney Ethics.

John H. Rosenberger 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 on a motion for reciprocal discipline filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-14. As a result of respondent's use of more

consent, the Supreme Court of Pennsylvania imposed a one-year suspended suspension and placed respondent on two years' probation, supervised by a proctor.

The OAE recommends a one-year suspended suspension, subject to respondent's successful completion of the two-year probationary period in Pennsylvania. Respondent consented to the OAE's proposed form of discipline. For the reasons expressed below, we determine to impose the same discipline meted out in Pennsylvania - a one-year suspended suspension.

Respondent was admitted to the Pennsylvania and the New Jersey bars in 1969 and 1992, respectively. He has no disciplinary history. He practices law in Pennsylvania and does not maintain a New Jersey office.

The facts, as found by Pennsylvania disciplinary authorities, are as follows.

Eugene and Madeline Sweeney had four children: respondent and his three sisters, Jean Marie Field, Marilyn Ann Fetter, and Mary Catherine Shea. In 1969, respondent married Marie Denny. They have eight children: William, Jr. (age 33), Joseph (age

32), Kate (age 30), Michael (age 27), Tim (age 26), John (age 24), Christa (age 21), and Jenny (age 19).<sup>1</sup>

John and Jenny were foster children whom respondent and Marie adopted. Both children have significant health issues: John was born with fetal alcohol syndrome, was severely abused early in his infancy, and now resides in a state psychiatric hospital. Jenny suffers from partial blindness and palsy. From 1978 through 1985, the Sweeneys took in eleven foster children, including John and Jenny.

In late 1996, respondent's father was diagnosed with lung cancer. In October 1997, respondent's mother (Madeline) fractured her vertebrae in a fall and was hospitalized for several months. For many years before then, she suffered from depression, urinary incontinence, arthritis, esophagitis, and osteoporosis.

Prior to November 1997, respondent's father handled the elder Sweeneys' finances. However, due to the lung cancer, by November 1997, he had become too weak to review the bills and write the checks. He asked respondent to take care of their finances. According to respondent, "I went to PNC Bank and we

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<sup>1</sup> The children's ages were as of August 2004.

got a check signature card and I was added to the account. So in November, December, January, he told me what they had in way of investments, and I started writing the checks."

In January 1998, respondent's parents moved into a Bryn Mawr, Pennsylvania, nursing home. At the time, Madeline weighed only sixty pounds; she was "very sick and depressed." At the end of the month, respondent's father died. After his death, the monthly charge for Madeline's care at the nursing home was approximately \$5000, which was paid from her savings.

That same month, Madeline asked respondent's wife, Marie, if she could leave the nursing home and move in with respondent and Marie. Madeline did not want to die in a nursing home. Marie and respondent discussed Madeline's request and "the heavy personal and financial burden" it would entail. They decided to bring Madeline to live with them, provided they had nursing and housekeeping assistance. None of respondent's three sisters were willing to take on the responsibility of caring for their mother.

Marie then told Madeline that, if she gained weight, she could move in with them. Between March and May 1998, Madeline gained ten to fifteen pounds.

In May 1998, Madeline moved in with respondent and Marie. Five of their children still lived at home. Madeline agreed to pay \$1000 in monthly rent, which was \$4000 less than what she was paying for the nursing home. At the time, Madeline was eighty-one years old. No one expected her to survive more than several weeks.

As of May 1998, respondent was in charge of Madeline's finances. According to respondent, "[s]he wrote her own checks for those things that she wanted to take care of herself," but he wrote the checks for her monthly rent, her aides' salaries, and medical bills.

After her arrival at respondent's home, Madeline's physical and mental health improved dramatically. She became a "vital member of the household." Madeline wrote several notes to respondent and his family, thanking them for the "happiest years" of her life.

Between May 1998 and August 8, 1999, respondent appropriately handled Madeline's funds. However, a series of unfortunate events caused him to use her funds for expenses other than her own.

Specifically, in September 1998, after having spent a number of years working with their son John on "many significant

emotional problems (including fetal alcohol syndrome, ADD and ADHD)," respondent and his wife were told that the public school could no longer accommodate him, as he was a danger to himself and others. During the months of September and October 1998, John was home schooled until his readmission to a special education program in November.

In June 1999, John, who was then nineteen-years old, attempted suicide by stabbing himself in the stomach. He was at home at the time. John spent the summer at the Horsham Clinic and then was transferred to a residential treatment facility in central Pennsylvania.

Also in June 1999, respondent's daughter Kate was put on complete bed rest during her pregnancy. Kate and her husband moved in with the Sweeney family. In July, Kate had a son, but her condition worsened, and she remained hospitalized.

Further, in mid-1999, respondent's daughter-in-law, Kathleen, suffered a miscarriage. Immediately thereafter, she and her husband, Bill, began to spend weekends with respondent's family so that they could visit Kathleen's mother, who was dying from esophageal cancer. During that same time, respondent's son, Tim, left college and returned home, due to emotional problems caused by John's suicide attempt in June.

The problems that surfaced during this time were not limited to respondent's nuclear family. In August 1999, Marie's sister-in-law gave birth to her fifth child, who was critically ill. Consequently, Marie agreed to take in her sister's other four children, ages two through eight.

In the midst of these catastrophic events, respondent and his wife were required to continually reassure Madeline that she was not too much of a burden "so as to keep her from returning to the nursing home," as she feared would be necessary.

The family crises of 1999 did not end with the dawn of the New Year. In 2000, Kate's birth to another child caused her to suffer from post-partum depression. Because Kate admitted to thoughts of killing her children and herself, the children spent weekends with respondent and his family.

By early 2001, John was living at home again. However, his behavior so terrified Madeline that he had to leave the home. Eventually, he was admitted to Norristown State Hospital, leaving respondent devastated.

In the summer of 2001, respondent's mother-in-law broke her arm. She moved in with respondent's family for about six weeks to receive care.

On December 9, 2001, Madeline died. Respondent withdrew emotionally and behaved as an automaton.

In the summer of 1999, because of escalating financial problems after Madeline's arrival, respondent began to write checks from her account, for his and his family's needs. Respondent did not ask Madeline if he could borrow the funds for fear that she would become upset, feel that she was a burden, and comply with her daughters' "repeated urgings" to return to the nursing home. Respondent explained:

At that point my receipts were slow coming in, and it was obvious that I should be doing something about trying to get rid of the house. And I had fallen into what I have come to realize was really a lack of reality, a depression and just being overwhelmed by what was going on.

I did have a case pending which I thought would more than cover what I looked at that time as borrowing, and I did it because I couldn't face the prospect of talking to my mother and saying that I can't keep things together, I'm going to sell the house. Because I knew if I sold the house, she was going to leave, and I knew if she left, she was going to go into a state of depression and stop eating and die, and I couldn't come to grips with it.

[2T386-2 to 22.]<sup>2</sup>

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<sup>2</sup> "1T" refers to the transcript dated August 3, 2004.

"2T" refers to the transcript dated September 13, 2004.



The Pennsylvania hearing committee believed respondent's explanation. As stated in its report,

[r]espondent had refrained from asking [his mother] for these monies, since just posing the question would have caused his mother great emotional discomfort and may well have occasioned her making the rash and irrational decision to return to the skilled nursing facility from whence she came (as urged by Respondent's sisters), believing herself to be too much of a burden on her son and his family.

[OAEaEx.Cp.17.]<sup>3</sup>

As described by respondent, his need for additional funds stemmed from the following circumstances.

After Madeline moved into respondent's home, he began to spend less time working and developing clients so that he could help care for her. As a result, his income decreased. He began to worry whether he could pay the mortgage.

At the time, the home was mortgaged to the hilt because respondent had been under some financial distress for a few years. The monthly mortgage payment was about \$2600, and the family was living "paycheck to paycheck."

Respondent continued to write checks from Madeline's account until she died, in early December 2001, about three-and-

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<sup>3</sup> "OAEa" refers to the appendix to the OAE's brief.

a-half years after her arrival. The unauthorized expenditures totaled approximately \$229,000.

Respondent testified that he used the funds to defray his living expenses. For example, he paid a substantial American Express bill (approximately \$42,000), personal income taxes, and education loans for his children. He also purchased windows, a new boiler, and steam lines for his home. When asked if he had used the power of attorney "in any way," respondent answered: "Not to my knowledge. I'm not entirely certain, but I don't think so because everything was basically in the checking account."

Both the Pennsylvania hearing committee and the Pennsylvania Disciplinary Review Board found that "[a]t all relevant times, Respondent expected and intended to repay his mother and/or her Estate for the monies he had 'borrowed' from an anticipated [\$300,000] fee in a large personal injury case." Respondent repeatedly testified that he had borrowed the funds and intended to repay his mother. In fact, respondent stated, he removed the funds from his mother's account "by check because I knew I had to keep a record of it because I intended to pay it back."

On the day of Madeline's death, her checking and money market accounts had a combined balance of about \$6000.

From March through November 2002, respondent's sisters asked him to provide them with the value of the estate and an expected date of distribution. Respondent told Jean that the value of the estate assets was \$200,000 to \$250,000 and that each beneficiary would receive approximately \$45,000 by April 2002.<sup>4</sup> Respondent's sisters were unaware of his use of Madeline's funds.

In October 2002, respondent lost the personal injury case that he believed would generate a fee large enough to allow him to repay what was now Madeline's estate. In December 2002, Jean sent respondent a letter requesting an accounting, estate financial records, and distribution by January 15, 2003. On December 20, 2002, respondent sent Jean a copy of the inheritance tax return, which reflected \$154,695.06 in assets, \$2,048.20 in debts, and \$21,233.87 in funeral expenses and administrative costs. That left a net estate value of \$131,421.99, out of which \$5,913.58 in inheritance tax was due.

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<sup>4</sup> Presumably, the correct date was April 2003.

The assets included a note receivable in the amount of \$137,116. Respondent did not tell Jean that the note receivable was from him and that it represented the funds spent on expenses not attributed to his mother.

On January 15, 2003, respondent wrote to his sisters and

- a. apologized "for having misled [them] regarding Mom's Estate";
- b. represented that he had "borrowed from Mom the \$137,116.00 set forth on the tax return before she died and I cannot presently pay it back;"
- c. explained that he was having "severe financial crises" with his legal billings during the year before his mother died;
- d. stated that he was "trying to figure out a way to straighten this out"; and
- e. asked his sisters to "please bear with [him] for two more months."

[OAEaEx.Cp.11-p.12¶42.]

In February 2003, respondent gave his sisters all bank records pertaining to his mother's pre-death personal account and her estate account.

Respondent has undertaken efforts to repay his sisters. He testified that he is seeking out case referrals from other lawyers. In addition, respondent and his wife purchased a

property in Maryland for \$5900, which they are renovating, in the hopes of making a substantial return on the investment.

Richard F. Limoges, M.D., a board-certified psychiatrist and clinical assistant professor at the University of Pennsylvania, testified that, throughout the period of respondent's misconduct, he was suffering from "an adjustment reaction with mixed disturbance of emotions." Limoges described the disorder as follows:

It is a significant chronic depressive illness brought about by multiple, severe life stressors, or significant stressful events in one's life. The stressors cause decreased or aberrant performance, changes in professional or social relationships, uncharacteristic conduct, and an alteration of mood which is typically clinical depression and/or anxiety. An adjustment reaction is tied to a cause, and once the stressors are not in one's life anymore, gradually the condition will subside. It is described as chronic in this case because Respondent's adjustment reaction lasted for several years.

[OAEaEx.Cp.9¶33.]

Further, according to Limoges, respondent "manifested a personality disorder referred to as the 'rescuer' or the 'hero child.'" Limoges opined that, in addition to the adjustment reaction, respondent's misrepresentations to his sisters with respect to Madeline's estate were related to his role as the

family's "hero child" because, "given the tremendous amount of stress [respondent] was experiencing, he was unable to grasp the reality that he could not repay the Estate and did not want to disappoint his sisters and let them down."

Limoges identified the stressors in respondent's life, during the summer of 1999, as (1) his personal care for his mother, (2) John's suicide attempt, (3) daughter Kate's depression, (4) son Tim's emotional problems, (5) chaos in the home "due to the comings and goings of so many needy relatives," and (6) respondent's fear of losing his home where so many people sought refuge.

According to Limoges, respondent's conduct was aberrant, with no risk of reoccurrence. Respondent had been in weekly therapy with Limoges from October 2003 through the date of the doctor's testimony, August 2004.

Limoges opined that respondent had made substantial progress in therapy. Specifically, respondent has "come to realize in retrospect that his use of his mother's funds was not sufficiently justified by his rationalizations that it was to his mother's benefit not to tell her about his 'borrowing' her funds because "it would only upset her.'"

Six individuals, including respondent's wife, testified about his good character. All of them were steadfast in their opinion that respondent is an honest man and enjoys an excellent reputation within the community. Two witnesses are especially noteworthy: Frank Cervone, Esquire, Executive Director of the Support Center for Child Advocacy in Philadelphia, and Father Donald Reilly, the Prior Provincial of the Province of St. Thomas of Villanova.

Cervone testified that, for the past twenty-two years, respondent has donated substantial time to assisting foster children, including "exceptional efforts on behalf of several special needs children." In May 2004, the Support Center for Child Advocacy honored respondent as a distinguished advocate for children.

Cervone also testified that respondent is among "the most straightforward and honest people" he has known. He described respondent as "a person of great moral character" who has never let the children down.

Reilly testified that he has known respondent for sixteen years; has consulted with him daily; has a very high opinion of respondent; and frequently relies upon his judgment. Notably, as of the day of Reilly's testimony, respondent had "power of

attorney over hundreds of thousands of dollars" and had maintained that power of attorney for two-and-a-half years.<sup>5</sup> Although Reilly knows of respondent's misconduct, he has "no hesitation at all" in leaving these funds in respondent's control.

The Pennsylvania hearing committee concluded that respondent violated RPC 1.15(a) and (b) and RPC 8.4(c). The committee found respondent's testimony forthright. According to the committee, "the evidence is credible that Respondent always intended to 'repay' his mother and/or his sisters out of his anticipated fee from an identifiable and viable personal injury suit."<sup>6</sup> Moreover, he has "amply demonstrated that he will make every reasonable effort to make restitution to his sisters."

Due to mitigating factors that the committee considered compelling and extraordinary, it recommended a public censure. The mitigating factors included respondent's diagnoses and their

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<sup>5</sup> Reilly's testimony was not clear on why respondent has power of attorney over these funds. He stated only that one of the Augustinian priests had started "a nonprofit do-good" organization but failed to spend the money that was raised. Thus, respondent was granted power of attorney for the purpose of liquidating the assets expeditiously.

<sup>6</sup> Prior to the hearing, respondent stipulated that he had "intentionally misappropriated" his mother's funds but that the misappropriated funds were in the form of a loan.



effect on his behavior; the stressors in existence after Madeline's arrival at respondent's home; the committee's belief that Madeline would have approved the expenditures, had she been asked; the fact that "Respondent's mother was not harmed by his conduct, but that she, in fact, received great care and love while in his home during her final years and was 'happier than ever;'" the "essentially negligible" financial harm to respondent's sisters, in that "the eventual cost to Madeline Sweeney of her residing with her son for three and one-half years and of her enjoying her 'happiest years' approximated the out-of-pocket expenses that she would have incurred had she remained at Bryn Mawr Terrace . . . .;" respondent's unblemished disciplinary record throughout his thirty-four years of practicing law; his career-long commitment to pro bono services by representing children on behalf of the Support Center for Child Advocacy, in Philadelphia; his role as a foster parent for eleven children and his adoption of two of them; his excellent reputation in the community for honesty and ethical conduct; his service in the United States Marine Corp, for which he earned the rank of Captain; his cooperation with ethics authorities throughout the disciplinary proceedings, including his admission

of all alleged violations; and his attempt to begin making restitution to his sisters.

A divided Disciplinary Board of the Supreme Court of Pennsylvania agreed with the committee's findings and recommendation for discipline. In the Board's view, "[t]his matter presents a very sad case. Respondent was instrumental in not only extending his mother's life but also improving the quality of her life by taking her into his home to live . . . when his siblings were either unwilling or unable to provide care for their mother." The Board concluded that respondent's "motives for handling the situation as he did were driven by the familial relationship" and that there was "no reason for this Board to believe that Respondent would have handled fiduciary obligations to non-family clients in the same unethical manner."

The Pennsylvania Supreme Court, however, disagreed with the measure of discipline recommended by the committee and the Board. The Court suspended respondent for one year, staying the suspension "in its entirety." The Court "placed [respondent] on probation for a period of two years," subject to selection of a "practice monitor," who would examine his accounts and records monthly, file quarterly reports with the Disciplinary Board, and immediately report "any violations by respondent of the terms

and conditions of probation." Nothing in the record indicates that the Court disagreed with the committee's and the Board's findings of fact and conclusions of law.

Reciprocal discipline proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides in pertinent part:

The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:

(A) the disciplinary or disability order of the foreign jurisdiction was not entered;

(B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;

(C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;

(D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;  
or

(E) the unethical conduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (E).

"[A] final adjudication in another court, agency or tribunal, that an attorney admitted to practice in this state . . . is guilty of unethical conduct in another jurisdiction

. . . shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state." R. 1:20-14(a)(5). "The sole issue to be determined . . . shall be the extent of final discipline to be imposed." R. 1:20-14(b)(3).

Admittedly, respondent knowingly misused his mother's monies, although he considered the withdrawals as loans. Had respondent been acting in an attorney capacity, disbarment would have been mandatory under In re Wilson, 81 N.J. 451 (1979) (unauthorized use of client's funds, whether the funds are stolen or borrowed, constitutes knowing misappropriation and warrants disbarment). Respondent's role here was not that of an attorney but that of a fiduciary -- as the handler of his mother's financial affairs -- and of a son caring for an ailing mother. Nevertheless, in either capacity, absent his mother's consent, respondent had no right to spend her funds for his and his family's purposes, even if the use to which the monies were put benefited his mother. By failing to apply the monies solely to the mother's expenses, respondent breached his fiduciary to her, a violation of RPC 1.15(a) and (b).

The record, however, does not clearly and convincingly support the conclusion that respondent stole the funds. Both

the Pennsylvania hearing committee and the Disciplinary Review Board found that respondent borrowed the funds, always intending to replace them with an expected \$300,000 fee from a large personal injury case.<sup>7</sup> Pursuant to R. 1:20-14(a)(5), we are bound by those findings. The sole remaining issue, thus, is the quantum of discipline for respondent's ethics offenses. R. 1:20-14(b)(3).

"The proper measure of discipline will depend on a number of factors, including the nature and number of professional transgressions, the harm caused by those transgressions, the attorney's ethical history, and whether the attorney is capable of meeting the standards that must guide all members of the profession." In re Harris, 182 N.J. 594, 609 (2005). "The severity of discipline to be imposed must comport with the seriousness of the ethical infractions in light of all the relevant circumstances." In re Nigohosian, 88 N.J. 308, 315 (1982).

That respondent possesses the good character and integrity required of every member of the bar is unquestionable.

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<sup>7</sup> Although, in one instance, the Pennsylvania Board used the word "converted," its seventeen-page decision is replete with references to respondent's intent to repay his mother.

Pennsylvania disciplinary authorities found him to be truthful and capable of continuing to behave "in the same legal and ethical manner that he had done throughout his 34-year legal career." They found respondent's expression of regret to be sincere and concluded that he is not a danger to the public. The Pennsylvania disciplinary authorities were convinced that his conduct was motivated solely by the considerable pressures generated by his "rescuer" personality.

We agree with the Pennsylvania disciplinary authorities that respondent's conduct was prompted by the many unfortunate events that beset his family at the time and by his heroic efforts to nurture the many family members that sought comfort from him. As the Pennsylvania hearing committee observed, respondent had become the "victim of a 'perfect storm' of personal and financial stressors." All the while, "he was attempting to give aid, solace, and support" to the many members of his family. "Throughout, Respondent viewed as essential the preservation of the family home . . . since it served as a hospice and sanctuary for so many. Indeed, Respondent, with the best of intentions, had bitten off more than he could properly chew."

In view of the foregoing, we determine that discipline no greater than the one-year suspension imposed in Pennsylvania is appropriate. Indeed, even if respondent had been found guilty of theft, a one-year suspension would not have been inappropriate, in light of the compelling circumstances that mitigated his conduct. See, e.g., In re Jaffe, 170 N.J. 187 (2001) (three-month suspension for attorney guilty of theft by deception; the attorney submitted false health insurance claims); In re Pariser, 162 N.J. 574 (2000) (six-month suspension for attorney guilty of official misconduct; during his employment as a deputy attorney general in the Office of the Attorney General, the attorney stole items from co-workers); In re Hoerst, 135 N.J. 98 (1994) (attorney suspended for six months for theft by deception; the attorney, a County Prosecutor, used forfeiture funds to pay for his and a female companion's trip to California); and In re Farr, 115 N.J. 231 (1989) (six-month imposed on attorney who, in addition to other serious ethics transgressions, stole evidence - marijuana and PCP - from the Prosecutor's Office, where the attorney was employed as an assistant prosecutor).

The addition of respondent's misrepresentations to his sisters, a violation of RPC 8.4(c), does not require discipline

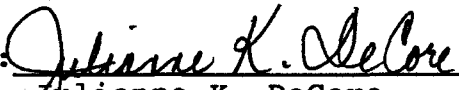
stronger than a one-year suspension. Here again, as stated by respondent's psychiatrist, the reasons behind the misrepresentations were respondent's "adjustment disorder and 'hero child' mentality," that is, he "wanted everybody to believe that all was well and that he would make all be well."

All in all, there is no reason to deviate from the level of discipline imposed by the Pennsylvania disciplinary authorities. We determine, thus, to impose a one-year suspended suspension, subject to respondent's successful completion of the two-year probation period in Pennsylvania.

Members Boylan, Stanton, and Wissinger did not participate.

We further require respondent to reimburse the Disciplinary Oversight Committee for the costs incurred in connection with the prosecution of this matter.

Disciplinary Review Board  
William J. O'Shaughnessy  
Chair

By:   
Julianne K. DeCore  
Chief Counsel



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**SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD**

In the Matter of William F. Sweeney  
Docket No. DRB 06-195

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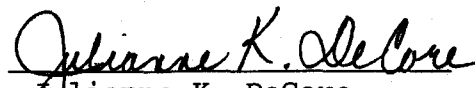
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Argued: September 21, 2006

Decided: November 16, 2006

Disposition: One-year suspended suspension

Members	Disbar	One-year Suspended Suspension	Reprimand	Dismiss	Disqualified	Did not participate
O' Shaughnessy		X				
Pashman		X				
Baugh		X				
Boylan						X
Frost		X				
Lolla		X				
Neuwirth		X				
Stanton						X
Wissinger		X				X
<b>Total:</b>		6				3

  
Julianne K. DeCore  
Chief Counsel