

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 03-425

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IN THE MATTER OF  
KATHLEEN VELLA  
AN ATTORNEY AT LAW

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Decision

Argued: January 29, 2004

Decided: March 11, 2004

Patricia Davis appeared on behalf of the District IIIB Ethics Committee.

Michael A. Gill 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 based on a recommendation for discipline (forty-five day suspension) from the District IIIB Ethics Committee ("DEC").

The complaint alleged that respondent aided in her client's fraudulent attempt to gain title to his father's house by maintaining that the deceased father was alive.

The complaint alleged violations of RPC 3.3(a)(5) (lack of candor to a tribunal), RPC 4.1(a)(2) (failure to disclose a material fact to a third party in order to avoid assisting in a fraud), and RPC 8.4(c) (misrepresentation).

Respondent was admitted to the New Jersey bar in 1986, and has no prior discipline.

In or about February 2000, Charles Kingsdorf, acting as guardian for his incapacitated father, Jerome Kingsdorf, retained respondent to file a divorce action in Jerome's behalf.

Jerome and Elizabeth Kingsdorf were married in 1984. When they met, Elizabeth owned a house in Cologne, New Jersey. Jerome owned a house in Mays Landing, New Jersey. Upon the marriage, they added each other to the respective deeds to the properties, so as to become tenants by the entirety.

In 1997, Jerome and Elizabeth separated. Jerome remained in New Jersey, while Elizabeth returned to her native state of Maine. In September 1999, Jerome suffered a stroke. Shortly thereafter, he was placed in a nursing home and declared incompetent. Charles, Jerome's child from a prior marriage, sought the divorce for his father, in order to distribute the marital estate, including the two houses.

On March 1, 2000, respondent filed a divorce complaint, captioned "Charles Kingsdorf, Guardian of the Person and Property of Jerome J. Kingsdorf, an incapacitated person v. Elizabeth Kingsdorf."

On May 25, 2000, Elizabeth's attorney, Mona R. Raskin, Esq., filed an answer and counterclaim. A short time later, the parties negotiated an agreement whereby Jerome would retain the Mays Landing property and Elizabeth would retain the Cologne property. At the time, the Mays Landing property had \$175,000 in equity. The Cologne property had \$19,000 in equity. Elizabeth agreed to the arrangement, despite the disparate equity in the properties, for reasons explored below.

On June 12, 2000, respondent sent Raskin a proposed final judgment of divorce by consent. On June 23, 2000, before Elizabeth acted on the matter, Jerome died. Charles completed a death certificate for Jerome, falsely declaring him “divorced” and inserted “N/A” to indicate that Jerome died without a spouse.

On June 27, 2000, Charles informed respondent that his father had passed away. Respondent did not notify Raskin of the death. Thereafter, on July 5, 2000, Charles executed the consent judgment of divorce in Jerome’s behalf. A hearing on the uncontested divorce was then scheduled for July 12, 2000.

Still unaware of her estranged husband’s death and believing that he was in a New Jersey nursing home, in July 2000, Elizabeth traveled from Maine for the divorce hearing. On July 12, 2000, she executed the consent judgment of divorce and a quitclaim deed, both having been prepared by respondent, thus conveying her interest in the Mays Landing property to Jerome. Similarly, Charles quitclaimed Jerome’s interest in the Cologne property to Elizabeth. Respondent coordinated the exchange of the deeds with Raskin, but failed to disclose Jerome’s death to either of them.

On July 12, 2000, respondent, Elizabeth and Raskin attended the divorce hearing. Charles did not attend the hearing that day.<sup>1</sup> Respondent continued the pattern of concealment, this time failing to reveal to the court that Jerome had passed away several weeks earlier. During a colloquy with the judge, respondent referred to Jerome as an incapacitated person, not deceased. She also represented that the consent agreement was

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<sup>1</sup> Respondent later testified that Charles’ presence at the hearing was not necessary.

in the best interests of both Charles and Jerome, as if he was still alive. At one point in the colloquy, the judge commented as follows:

It further appears that the parties have entered into a Consent Final Judgment of Divorce. It was negotiated by the attorneys, the attorney for the guardian of the plaintiff, who is an incapacitated person, and by the attorney for the defendant. Defendant has testified that she has entered into this agreement voluntarily, that she believes the agreement is fair. There have been representations placed upon the record by [respondent], who is the attorney for Charles Kingsdorf, the guardian that in the guardian's opinion the agreement is fair, that it's been negotiated and it's been entered into voluntarily, and that it protects the father's interests.

[Exhibit 8 at 12.]

At the conclusion of the hearing, the judge signed the consent final judgment of divorce.

Months later, on October 31, 2000, in Charles' sale of the Mays Landing property, respondent finally advised Raskin that Jerome had passed away, and requested that Elizabeth execute a new quitclaim deed conveying her interest in the Mays Landing property to Jerome's estate.

Raskin filed a motion to nullify the divorce judgment and quitclaim deed. In turn, respondent filed a motion to enforce the terms of the settlement and to enter the final judgment of divorce nunc pro tunc. The trial court found in favor of Charles and Jerome, enforcing the consent agreement and the divorce judgment. Thus, Elizabeth filed an appeal.

The Appellate Division reversed the trial court and remanded<sup>2</sup> the matter, finding that: (1) Charles' and respondent's conduct amounted to a fraud upon the court; 2) the trial court lacked the power to make equitable distribution of the marital property after Jerome's death; and (3) the trial court lacked continuing subject-matter jurisdiction over the issue of enforceability of the parties' property transfer agreement, as contained in the divorce settlement.

The Appellate Division was particularly distressed that: (1) Charles had fraudulently stated on the death certificate that Jerome had died "divorced" and without a living spouse; and (2) that respondent had been complicit in the fraud by taking no action to inform Raskin, Elizabeth and the trial court that Jerome had died before the divorce was finalized.

Respondent admitted essentially all of the above facts in either her answer or testimony before the DEC. However, she painted a benign picture of the representation. According to respondent, when Charles first approached her, Jerome was about to be released from the hospital to a nursing home. The nursing home required arrangements for payment that led Charles to prepare some of his father's assets for sale. According to respondent, Charles told her that Elizabeth had emptied Jerome's bank accounts and fled to Maine with a mobile home that the couple had purchased together. Charles also alleged that Elizabeth had diverted monthly social security checks and rental payments from investment property, which were Jerome's, and had arranged for those payments to be sent to Maine. Therefore, according to respondent, Charles sought to settle with Elizabeth in order to secure payment arrangements for his father's future care.

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<sup>2</sup> The remand was solely to address Elizabeth's request for attorneys fees.

Respondent also testified that, on June 27, 2000, Charles told her that Jerome had died. Respondent was not shocked or surprised. Rather, by her own account, she advised Charles that the death would have little effect upon the case, because they had already, by that time, ironed out the details of an agreement to distribute the couple's property. She added that the consent agreement also resolved those "smaller claims" raised by Charles, including the mobile home, bank accounts, social security and rent checks.

Respondent denied that she knew that Charles had misrepresented his father's marital status on the death certificate. Moreover, she claimed that Charles and she never discussed concealing Jerome's death with each other.

Respondent explained her failure to disclose Jerome's death as follows:

There was a comment that was made, I don't know if it was made — I think it was made directly and maybe also alluded to by [Raskin], and I know it is in the Appellate Division decision, at no point when I was representing Charles did he ask me not to disclose the fact that his father had died. That request was never made of me. I did not disclose the death of Jerome because I wrongly believed that it made no difference, and part of the shame involved with acknowledging that that is true is not just that it was an error of judgment, it was an error of law, but it was also a failure to acknowledge that the client in this matter was not Charles, but was Jerome, who was a living, breathing gentleman, which I essentially dealt with as if he didn't exist, and in my mind, the individual I was working with, I was dealing with, was Charles, and I was wrong. I mean, I can't explain it in any other fashion except to say it wasn't a judgment made of me, there was nothing I gained by doing it, it was just stupid.

[T77.]<sup>3</sup>

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<sup>3</sup> T refers to the transcript of the July 29, 2003, DEC hearing.

Finally, respondent made certain specific admissions in her formal answer to the ethics complaint. With regard to RPC 3.3(a)(5), respondent admitted that Jerome's death was a material fact, but stated that she had overlooked that fact. She denied knowing that the trial court would likely be misled by her omission, but admitted that she should have known that her actions would have done so. Respondent asserted, however, that her conduct was not accompanied by any "malevolent intent."

With respect to RPC 4.1(a)(2), respondent denied that her failure to disclose Jerome's death served to aid Charles in his perpetrating a fraud. Respondent asserted in her answer her belief at the time that the consent agreement between the parties "nullified the tenancy by the entirety."

Finally, with regard to RPC 8.4(c), respondent came close to admitting the violation, conceding that she should have known that Charles could not sign as guardian after Jerome's death. She claimed, however, that she did not intend to violate the rule in this respect.

Raskin, too, testified at the DEC hearing. She stated that she was unaware of Jerome's death until October 31, 2000, when a real estate agent involved in the sale of the Mays Landing property inquired about the quitclaim deed. Raskin stated that the agent was perplexed that an attorney had prepared the deed into Jerome after his death, when it should have designated his estate instead. Raskin then pieced together the deception.

Raskin also testified that Jerome's death was not made immaterial simply because the parties had reached an agreement prior to his death. Raskin asserted that she and Elizabeth discussed many scenarios during the negotiations with respondent and Charles before reaching the consent agreement. In fact, she testified that she and Elizabeth

consulted an estate attorney to explore avenues other than divorce to best protect Elizabeth's interests.

According to Raskin, after all of their research was complete, Elizabeth decided to accept Charles' proposal. Elizabeth was particularly worried that Jerome's long-term healthcare costs, which included long-term nursing home care, could quickly wipe out the equity in their real estate and other assets. By agreeing to the proposal, Elizabeth sought to limit her liability for those ongoing costs. In the process, she accepted title to the less valuable of the two houses, which she claimed Jerome had neglected to maintain or pay taxes on. Moreover, she agreed to waive any claim to alimony or support.

Naturally, Raskin claimed, she was upset to learn that Jerome had died before any of the documents were finalized. She called respondent to confront her with the information from the real estate agent. She testified that respondent told her at that time that Elizabeth could either sign a new deed or respondent would file a motion to compel her to do so. Raskin related how she broke the news to Elizabeth:

Of course I had the unpleasant task of bringing this fact to the attention of my client, who then had many questions for me, how could this have happened, am I divorced, am I a widow, of course a whole myriad of questions, issues all of which were being dealt with on a long distance basis of conveying this kind of information to her over the phone.

[T21.]

At one point in the hearing, the presenter asked Raskin to read two passages from the Appellate Division opinion:

Here, plaintiff's false statements in obtaining Jerome's death certificate, coupled with his failure, along with the failure of counsel, to disclose Jerome's death to opposing counsel and the court, resulted in the perpetration of a fraud upon the court and the obtaining of a divorce by subterfuge.



We conclude that plaintiff's conduct in creating this sham is so reprehensible that the subsequent judgment requiring defendant to execute a deed in his favor cannot be affirmed in the context of the divorce proceedings. This result is dictated by the requirements of fairness and equity, as well as by application of the legal principles to which we have referred. Plaintiff's fraudulent conduct, and his attorney's participation in it, cannot be deemed inconsequential.

[T27, 351 N.J. Super. 144, 155 (2002.)]<sup>4</sup>

The second passage from the opinion reads as follows:

FN3. Simultaneous with the filing of this opinion, we have referred this opinion to the Office of Attorney Ethics for its consideration of the conduct of plaintiff's attorney. *See generally Forrest, supra, 158 N.J. at 438, 730 A.2d 340* (finding plaintiff's counsel's "nondisclosure of [client's] death deceived both his adversary and the arbitrator about a fact that was crucial to the fair and proper resolution of the litigation").

[T28, 351 N.J. Super. 144, 160 (2002.)]

Finally, Raskin testified about the impact that respondent's actions had upon her client:

You know, I guess I could address that on a number of different levels. I mean, certainly that what started as a relatively simple matter with not much in the way of fees or costs having to be expended blossomed into a matter which we're now three years post divorce at this juncture, and obviously, the overwhelming fees and costs that were incurred were things that happened after the July 12, 2000 divorce, a series of proceedings that took place at the trial level and motions, cross motions, appearance for oral argument, the request subsequent to the oral argument to prepare legal briefs on a number of different issues, and then some months later ultimately judgments being entered, divorces being vacated, lis pendens being filed to protect

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<sup>4</sup> The Appellate Division opinion was introduced at the hearing, but the panel hesitated to mark it as an exhibit because it is a public record. Respondent did not object to its inclusion in the record in this fashion.

the proceeds, the appeal process, settlement conferences and then of course the post appeal Chancery Division [sic] for which she retained alternate counsel. There was also the fact that she of course hails from Maine, so she had to make specific trips back to an area that she otherwise had no remaining contact in order to meet with me, to meet with [subsequent] counsel, and then of course there's aspects that I can't quantify for you, what is the effect of a protracted period of some three years worth of ups and downs of litigation on an elderly person of not knowing exactly where they are going to stand or what the outcome is going to be, what's the effect of calling somebody up long distance and saying whether the marriage worked out or did not work out, telling them post divorce that your husband died before you came for the divorce and answering questions, does this mean I'm a widow, am I a divorcee, absorbing that kind of angst and I guess I can't really quantify what is the effect of that on a party to that kind of action.

[T31-T32.]

Lastly, Mark Biel, Esq., testified on respondent's behalf.<sup>5</sup> Expert in the field of matrimonial law, Biel was retained by Elizabeth as Raskin's successor.<sup>6</sup> Biel asserted that it was not unreasonable for the trial court to have determined as it did, after respondent's disclosure of Jerome's death, that the consent agreement should be enforced, because the parties had a "meeting of the minds." Biel found the Appellate Division's opinion in Kingsdorf stilted and mired in "black letter law." He suggested that the better approach was the trial court's determination — a progressive one that recognized the meeting of the minds as the most important aspect of the case. Indeed, Biel sought to excuse

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<sup>5</sup> Biel brought a character letter with him to the hearing, referenced as a part of Exhibit "F." Respondent's counsel referred to that exhibit as containing various character letters. For unknown reasons, Exhibit F was not made a part of the record.

<sup>6</sup> After the Appellate Division opinion, Charles notified both respondent and Raskin that he intended to either name them as defendants or call them as witnesses in a subsequent civil action, prompting both attorneys to withdraw for potential conflicts of interest.

respondent's conduct on the basis that the consent agreement rendered her omission irrelevant. On cross-examination, Biel grudgingly acknowledged, however, that Jerome's death was a material fact that the trial court should have been made aware of before making its determination.

Biel was also asked on cross-examination about the effect of Jerome's death on the guardianship. He readily acknowledged that, by operation of law, upon the death of the principal, the guardianship ceases to exist. Biel was asked how it affected respondent's predicament that she drafted and allowed Charles to sign documents as guardian, after having been told of Jerome's death. Biel asserted that an average attorney might not be aware under the circumstances that the guardianship had terminated upon the death of the principal.

The DEC found that respondent lacked candor, in violation of RPC 3.3(a) (5) by failing to alert the court to Jerome's death, knowing that the court would tend to be misled by her omission. Further, the panel found that Jerome's death was a material fact, the disclosure of which was necessary to avoid the commission of a fraudulent act, in violation of RPC 4.1(a)(2). Finally, the DEC found a violation of RPC 8.4(c) for misrepresenting to Raskin, Elizabeth, and the trial court, that Jerome was alive throughout the time in question. The DEC recommended the imposition of a forty-five day suspension, mitigated by the factors discussed below.

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

Respondent admitted the underlying conduct that formed the basis of the ethics complaint – that she helped Charles conceal Jerome’s death from Raskin, Elizabeth and the trial court. For that, she expressed remorse. However, she tempered her remorse with the argument that she was unaware of her obligation as an attorney to disclose that information. Therefore, she claimed, her behavior did not amount to a violation of any RPC.

Respondent is an experienced attorney. We do not believe that she was unaware that the death of her client,<sup>7</sup> in the middle of his divorce, was material to that proceeding and required disclosure to his wife and the trial court. RPC 3.3(a) (5) states that:

(a) A lawyer shall not knowingly:

....

(5) fail to disclose to the tribunal a material fact with knowledge that the tribunal may tend to be misled by such failure.

RPC 4.1(a) (2) provides that

(a) In representing a client a lawyer shall not knowingly:

....

(2) fail to disclose a material fact to a third person when the disclosure is necessary to avoid assisting a criminal or fraudulent act.

No reasonable attorney could conclude that Jerome’s death was not material, or “made no difference,” as respondent alleged. Respondent ignored the basic tenet that, upon Jerome’s death, the guardianship terminated. Worse yet, she actively participated in

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<sup>7</sup> By respondent’s own admission, she considered Jerome to be her client during the representation.

Charles' scheme to deceive Elizabeth that her husband was still alive and residing in a nursing home.

So, too, when Elizabeth agreed to the consent divorce, she did so after thoughtful consideration of all of the couple's circumstances. She sought the advice of an attorney, Raskin, as well as additional advice from an estate attorney. She knew that her financial well-being was at risk due to Jerome's foreseeable healthcare costs. In coming to an agreement with Charles over the division of the marital assets, she balanced out those considerations.

Once Jerome died, Elizabeth's potential liability for Jerome's care became moot. Suddenly, the equity in the properties was not in peril. In fact, as the Appellate Division later found, Elizabeth was entitled to the Mays Landing property upon Jerome's death as the surviving tenant. Certainly, the situation was not innocuous, as respondent alleged. It is also inconceivable that respondent thought Jerome's death was immaterial, and not likely to mislead the court if not disclosed. In fact, respondent's argument in this regard is at odds with her answer to the complaint, wherein she admitted that she had overlooked that fact. Yet, respondent remained silent about the death until the death was discovered four months later. Only then did respondent reveal the truth. For all of these reasons, we found a violation of RPC 3.3(a)(5).

With regard to RPC 4.1(a)(2), respondent helped Charles to perpetrate a fraud upon Elizabeth, Raskin, and the trial court. Respondent's only defense was asserted in her answer — that the consent agreement between the parties “nullified the tenancy by the entirety.” She wisely abandoned that argument, acknowledging that Jerome's untimely

death rendered the divorce action moot, and that, by operation of law, title to both properties vested in Elizabeth upon his death.

There is little doubt, however, that Charles' actions, as furthered by respondent, were fraudulent. He falsified the death certificate in two places, in order to hide Elizabeth's status as Jerome's wife at the time of his death. Thereafter, he studiously continued the process of concealment by pressing on with the divorce as if his father was alive. Respondent prepared documents for his signature, including the consent agreement, which he signed on July 5, 2000. One day after the trial court finalized the divorce, on July 13, 2000, Charles presented the Mays Landing deed and his affidavit of consideration as guardian, to the Atlantic County Clerk for recordation. It was not directly made clear how long it took Charles to place his father's house on the market. However, the Appellate Division noted that Charles placed the Mays Landing property on the market on August 21, 2000, and entered into a contract of sale (\$175,000) on October 1, 2000. Surely, respondent's disclosure of the death was necessary to prevent the fraud from continuing to permeate the legal system. Respondent's failure to meet that fundamental attorney obligation was in contravention of RPC 4.1(a)(2).

So, too, with regard to RPC 8.4(c), respondent's actions were deceitful, and misrepresentative of the true status of the matter. Her silence was no less a misrepresentation than if she had lied to her adversary and the court. "In some situations, silence can be no less a misrepresentation than words." Crispin v. Volkswagenwerk, A.G., 96 N.J. 336, 347 (1984). It is a virtual certainty that, had Elizabeth known that Jerome had died, and that \$175,000 in equity had been freed up in the Mays Landing property, the complexion of Charles' proposal would have been far different. Simply put,

if the truth had been disclosed to her immediately upon respondent's awareness of Jerome's death on June 27, 2000, Charles' fraud would have become impossible.

This case is very similar to In re Forrest, 158 N.J. 428 (1999), wherein the respondent/attorney received a six-month suspension for violations of RPC 3.3(a)(5) and RPC 8.4(c). In Forrest, the attorney was retained to represent the Fennimores in a personal injury action for injuries they sustained when another vehicle struck theirs. After the attorney filed a complaint, Mr. Fennimore died, from causes unrelated to the car accident. Mrs. Fennimore notified the attorney of her husband's death.

Thereafter, knowing of Mr. Fennimore's death, the attorney served unsigned answers to interrogatories on his adversary. Neither the answers nor the cover letter indicated that Mr. Fennimore had died.

Subsequently, the attorney and Mrs. Fennimore appeared at an arbitration proceeding, at which the attorney advised Mrs. Fennimore not to voluntarily reveal her husband's death. When the arbitrator inquired about Mr. Fennimore's absence, the attorney replied that he was "unavailable." The arbitrator awarded Mrs. Fennimore \$17,500 and \$6,000 to Mr. Fennimore. At no time before, during, or after the arbitration proceeding did the attorney inform the arbitrator that Mr. Fennimore had died.

The attorney's concealment continued, forcing the adversary to file a motion in the trial court to compel Mr. Fennimore's appearance for a medical examination. After an order requiring an examination and Mr. Fennimore's failure to appear for the court-ordered examination, the attorney finally disclosed to his adversary that Mr. Fennimore had died.

In Forrest, the Court held that a six-month suspension from the practice of law was the appropriate discipline for the attorney, finding that he engaged in misrepresentation and deceit by failing to disclose that fact to the court, an arbitrator and his adversary, while continuing with the litigation. The Court also found that the attorney's "non-disclosure of Mr. Fennimore's death deceived both his adversary and the arbitrator about a fact that was crucial to the fair and proper resolution of the litigation." In re Forrest, supra, 158 N.J. at 438.

Forrest and the instant matter are distinguishable in the sense that, here, there is no clear and convincing evidence that respondent actively advised her client to commit fraud. In addition, the attorney in Forrest had a prior private reprimand for negligent misappropriation and recordkeeping violations.

Respondent sought to mitigate her behavior, testifying that she was the sole caregiver for her aged and infirm mother during the time in question and has had no prior brushes with the disciplinary authorities. As previously noted, the DEC reviewed a number of letters from individuals attesting to her good character. We reviewed a group of character letters, presumably the same ones, received as attachments to respondent's January 6, 2004, brief to us.

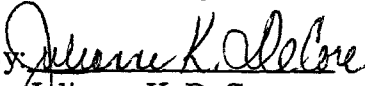
We determine that a three-month suspension is the appropriate degree of discipline for respondent's misconduct. This matter is distinguishable from Forrest, supra, in that respondent did not actively advise her client to conceal the truth, and has no prior discipline. One member recused herself. Two members would have found no violation of RPC 4.1(a)(2), believing that respondent may not have known that Charles' acts were



fraudulent, and voted for a forty-five day suspension. Two other members did not participate.

We also require respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.

Disciplinary Review Board  
Mary J. Maudsley, Chair

By:   
Julianne K. DeCore  
Chief Counsel

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

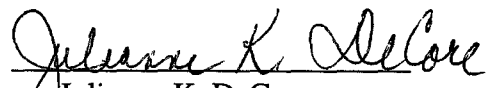
In the Matter of Kathleen Vella  
Docket No. DRB 03-425

Argued: January 29, 2004

Decided: March 11, 2004

Disposition: Three-month suspension

| <i>Members</i>       | <i>Disbar</i> | <i>Three-month<br/>Suspension</i> | <i>Forty-five<br/>day<br/>suspension</i> | <i>Admonition</i> | <i>Dismiss</i> | <i>Disqualified</i> | <i>Did not<br/>participate</i> |
|----------------------|---------------|-----------------------------------|--|-------------------|----------------|---------------------|--------------------------------|
| <i>Maudsley</i>      |               |                                   |  |                   |                | X                   |                                |
| <i>O'Shaughnessy</i> |               |                                   |  |                   |                |                     | X                              |
| <i>Boylan</i>        |               |                                   | X  |                   |                |                     |                                |
| <i>Holmes</i>        |               | X                                 |  |                   |                |                     |                                |
| <i>Lolla</i>         |               |                                   |  |                   |                |                     | X                              |
| <i>Pashman</i>       |               | X                                 |  |                   |                |                     |                                |
| <i>Schwartz</i>      |               |                                   | X  |                   |                |                     |                                |
| <i>Stanton</i>       |               | X                                 |  |                   |                |                     |                                |
| <i>Wissinger</i>     |               | X                                 |  |                   |                |                     |                                |
| <b>Total:</b>        |               | 4                                 | 2  |                   |                | 1                   | 2                              |

  
 Julianne K. DeCore  
 Chief Counsel