

Supreme Court of New Jersey
Disciplinary Review Board
Docket Nos. DRB 20-108 and 20-109
District Docket Nos. IV-2019-0036E and
IV-2019-0039E

In the Matter of
Christopher Michael Manganello
An Attorney at Law

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Decision

Decided: March 29, 2021

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

These matters were before us on certifications of the records filed by the District IV Ethics Committee (DEC), pursuant to R. 1:20-4(f), and have been consolidated for the imposition of discipline. The formal ethics complaints charged respondent, in two client matters, with having violated RPC 1.1(a)

(gross neglect); RPC 1.3 (lack of diligence); RPC 1.4(b) (failure to communicate); RPC 8.1(b) (failure to cooperate with disciplinary authorities); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

On July 7 and 8, 2020, respondent filed motions to vacate the defaults in these matters, which we denied on July 21, 2020. For the reasons set forth below, we now determine to impose a six-month consolidated suspension, with a condition.

Respondent was admitted to the New Jersey and Pennsylvania bars in 1998. At the relevant times, he maintained an office for the practice of law in Pitman, New Jersey.

On May 19, 2017, respondent was censured for his violation of RPC 1.3; RPC 1.4(c) (failure to explain the matter to allow the client to make informed decisions about the representation); RPC 1.5(b) (failure to memorialize the basis or rate of the fee); RPC 1.16(d) (upon termination of the representation, failure to return the client's file); and RPC 8.4(c). In re Manganello, 229 N.J. 116 (2017).

Service of process was proper. On January 8, 2020, the DEC sent a copy of both formal ethics complaints, by certified and regular mail, to respondent's

office address. The letters sent by regular mail were not returned. Certified mail receipts for both matters were returned to the DEC, signed with an illegible signature, evidencing delivery on January 25, 2020.

On February 25, 2020, the DEC sent letters to respondent, by regular mail, to his office address, informing him that, unless he filed verified answers to the complaints within five days of the date of the letters, the allegations of the complaints would be deemed admitted, the records would be certified to us for the imposition of discipline, and the complaints would be deemed amended to charge a willful violation of RPC 8.1(b). The mail was not returned. Moreover, as detailed below, respondent admitted having received both complaints.

As of March 10, 2020, respondent had not filed answers to the complaints, and the time within which he was required to do so had expired. Accordingly, the DEC certified these matters to us as defaults.

The Hardy Matter – DRB 20-108 - District Docket No. IV-2019-0036E

On April 6, 2018, the grievant, Manfred Hardy, a South Carolina resident, retained respondent to review his deceased brother's medical records, to obtain an expert medical report, and to advise whether a medical malpractice action should be commenced. Hardy paid a \$3,500 fee to respondent, who never produced an expert report or advice. Hardy repeatedly called respondent seeking

status updates, but respondent failed to return his calls until Hardy filed an ethics grievance against him. Respondent then provided Hardy with a copy of a July 1, 2019 letter that he had sent to AnCare, a potential defendant, subsequent to the expiration of the three-year statute of limitations for a medical malpractice claim in South Carolina. Respondent then assured Hardy that there was another way to proceed with a potential claim, but never followed up, and never again communicated with Hardy. Thereafter, respondent failed to reply to two letters from the DEC investigator seeking information about the grievance.

Based on the above facts, the complaint in the Hardy matter charged respondent with having violated RPC 1.1(a) and RPC 1.3 by sending a letter to a potential defendant after the expiration of the statute of limitations; by abandoning Hardy's case; and by accepting \$3,500 but taking no further action until after Hardy filed an ethics grievance. The complaint further charged respondent with having violated RPC 1.4(b) for failing to respond to Hardy's repeated requests for a status update on his case until an ethics complaint had been filed. Additionally, the complaint charged respondent with having violated RPC 8.1(b) by failing to cooperate with disciplinary authorities' efforts to investigate Hardy's grievance. Finally, the complaint charged respondent with having violated RPC 8.4(c) by misrepresenting to Hardy that a cause of action

could still proceed, despite the expiration of the statute of limitations, and then taking no action to advance Hardy's interests.

The Giordano Matter – DRB 20-109 - District Docket No. IV-2019-0039E

In 2009, the grievant, Geraldine Giordano, retained respondent to file a bankruptcy petition in her behalf and paid him a \$1,300 fee. Respondent failed to file the petition. For years thereafter, Giordano intermittently contacted respondent, who gave her reassurances and made appointments with her, but cancelled all the appointments. Giordano, who is seventy-five years old, continues to work to pay off her bills and to attempt to satisfy her creditors. After receiving his fee, respondent abandoned Giordano's matter. Respondent then failed to reply to two letters from the DEC investigator seeking information about Giordano's grievance.

Based on the above facts, the complaint in the Giordano matter charged respondent with having violated RPC 1.1(a) and RPC 1.3 by abandoning Giordano's case despite having accepted the \$1,300 fee. The complaint further charged respondent with having violated RPC 1.4(b) by failing to respond to Giordano's requests for updates and by making appointments with her and then canceling them. Additionally, the complaint charged respondent with having

violated RPC 8.1(b) by failing to cooperate with disciplinary authorities' efforts to investigate Giordano's grievance. Finally, the complaint charged respondent with having violated RPC 8.4(c) by misrepresenting to Giordano that he was actively pursuing a bankruptcy petition in her behalf.

As stated previously, on July 7 and 8, 2020, respondent filed motions to vacate the defaults in these matters. Respondent attached verified answers to each motion, with no other exhibits. The District IV Ethics Committee presenter submitted opposition to respondent's motions, requesting that they be denied and contending that respondent's delay tactics in respect of the defaults mirror his conduct during the ethics investigation. The presenter noted that respondent produced neither documents in support of any of his claims nor a certification in support of his motions; the presenter further asserted that respondent's submissions did not comply with the Court Rules.

In order to successfully vacate a default, a respondent must meet a two-pronged test by offering both a reasonable explanation for the failure to answer the ethics complaint and asserting meritorious defenses to the underlying charges.

In these matters, respondent failed to offer reasonable explanations for his failures to answer the ethics complaints. First, he admitted having received both

complaints, but asserted that he did not receive the DEC's February 25, 2020 "five-day" letters, which are not required by Court Rule but, rather, are provided as a courtesy. He claimed that his office mail is delivered through a slot in the door of a shared hallway and that, as an example, he also did not receive communications from a client in an unrelated matter. Respondent further claimed that, because of the COVID-19 pandemic and "the Supreme Court tolling matters pursuant to their Omnibus Order," he thought that his deadlines to answer the complaints had been tolled. Respondent stated that, as an immunocompromised individual, he has been working from home, and does not have the "usual level of control" over his files. He also asserted that he fell ill at the end of January 2020.

Respondent admitted receiving the DEC's letter postmarked May 4, 2020 informing him that his matters were being sent to us as defaults and that he would need to file a motion to vacate them.

Respondent further claimed that he would have filed answers to the complaints, but for the emergent reshuffling from his office to his home office, his failure to receive the DEC's five-day letters, and his misunderstanding that his matters were tolled.

Respondent's assertions, even if true, would not justify his default under the two-pronged standard. To begin, the ethics complaints filed against respondent were successfully served on January 8, 2020. Thus, pursuant to R. 1:20-4(e), respondent's answer was due twenty-one days later. On February 25, 2020, the DEC's letters, which respondent contended he did not receive, permitted respondent an additional five days to answer the complaint, or until March 2, 2020. The Supreme Court did not issue its Orders tolling matters due to COVID-19 concerns until March 17 and March 27, 2020. Thus, it is unreasonable for respondent to assert that he failed to answer the complaints because he believed his time to answer had been tolled by the Court. Accordingly, we concluded that respondent's explanation for his failure to file conforming answers is not reasonable, and that he did not satisfy the first prong of the test.

Nor did respondent satisfy the second prong of the test regarding either the Hardy or the Giordano matters. In the Hardy matter, respondent was charged with having violated RPC 1.1(a) and RPC 1.3 by sending a letter to a potential defendant after the expiration of the statute of limitations, by abandoning Hardy's case, and by accepting \$3,500 but taking no further action until after Hardy filed an ethics grievance; RPC 1.4(b) for failing to respond to Hardy's

repeated requests for a status update on his case until an ethics complaint had been filed; RPC 8.1(b) for failing to cooperate with disciplinary authorities' efforts to investigate Hardy's grievance; and RPC 8.4(c) by misrepresenting to Hardy that a cause of action could proceed, despite the expiration of the statute of limitations, and then taking no action to advance Hardy's interests.

Respondent asserted that Hardy's family informed him that Hardy was "difficult to deal with," and that he should instead communicate with Trisha Hardy (Hardy's niece and the decedent's daughter). Respondent claimed that Hardy "accepted this protocol." Further, respondent claimed that he informed Hardy, in July 2018, that he was ill, and would "not be working as quickly as [he] normally would be." Respondent claimed to have advised Hardy that the statute of limitations would not expire three years from decedent's death, because "at the time [he] was retained, [they] only had a report that opined that there was no negligence." After reviewing the medical records, respondent thought that a case for negligence or malpractice could be evident, and then "transitioned" to how to move forward and proceed with the case.

Moreover, respondent opined that Hardy filed the grievance against him due to a lack of communication. Respondent asserted that he was discussing the case with Trisha Hardy. When Hardy sent respondent a copy of the ethics

grievance, via e-mail, respondent claimed he called Hardy to clear up the misunderstanding. Respondent maintained that Hardy stated that he did not want to follow through with the grievance and, therefore, respondent called the ethics investigator and left a message. Respondent then assumed that the grievance would be dismissed. Respondent asserted in his answer that, because of the discovery rule that applies to medical malpractice cases in New Jersey, the time to file a medical malpractice action on Hardy's behalf had not expired.

Respondent's argument as to the merits of his defense failed to satisfy the second prong of the test to vacate the default. Respondent made contradictory allegations. Specifically, he assumed the grievance was dismissed because Hardy did not want to pursue the grievance against him, but also argued that he thought his time to answer was tolled. Moreover, respondent's conduct raises a concern, based on his apparent communications with Trisha Hardy, rather than with his client, the grievant.

Despite these concerns, it is clear that respondent does not have a meritorious defense to the ethics complaint, because he admitted he did not communicate with his client, but rather, claimed to have communicated with his client's niece. Even if he left a message for the ethics investigator concerning his belief that Hardy would withdraw his grievance, he did not follow up to

ascertain whether that had happened. Respondent stated that he was in possession of a medical report but did not assert that he was consulting experts or filing any type of court documents to pursue or preserve the case for his client. In fact, respondent failed to assert that he had taken any action at all for his client. Respondent stated the opposite – that he was still researching how to proceed in order to allow him to prosecute the case.

We, thus, determined that respondent failed to satisfy prong two of the test in the Hardy matter.

As to the Giordano matter, respondent was charged with having violated RPC 1.1(a) and RPC 1.3 by abandoning Giordano’s case and by receiving \$1,300 to file a bankruptcy petition but taking no further action; RPC 1.4(b) by failing to respond to Giordano and by making appointments with her and then canceling them; RPC 8.1(b) by failing to cooperate with disciplinary authorities’ efforts to investigate Giordano’s grievance; and RPC 8.4(c) by misrepresenting to Giordano that he was actively pursuing a bankruptcy petition in her behalf.

Here, respondent alleged as a meritorious defense that he diligently and promptly pursued the matter of Giordano’s bankruptcy petition and that his file is “replete” with documentation of his communications with Giordano and creditors. Respondent further stated that he has documentation that Giordano

was “well aware that no bankruptcy petition was filed, her agreement with that, and her satisfaction with the work performed.” Respondent asserted in the verified answer only that he discussed the “plusses and minuses of bankruptcy protection” with Giordano, and that he communicated with creditors regarding her case.

Further, respondent contended that he called the ethics investigator in response to her request. Then, he received a letter from the Fee Arbitration Committee that Giordano’s fee arbitration was declined, and he misinterpreted the letter to indicate that the ethics grievance was being dismissed.

Respondent admitted that he did not file a bankruptcy petition for Giordano, the crux of the grievance. He further admitted that he would make, cancel, and reschedule appointments with her. Respondent failed to set forth, in either the letter or the verified answer, any specific information as to what work he performed, and further failed to produce any communications between himself and Giordano that would support his allegation that she agreed not to file the bankruptcy petition.

Accordingly, we determined to deny respondent’s motions to vacate the defaults and entered a letter decision to that effect on July 21, 2020.

Moving to our review of the record, Respondent's failure to file answers to the complaints is deemed an admission that the allegations are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1). We find that the facts recited in the complaints support the charges of unethical conduct.

Specifically, in the Hardy matter, respondent committed gross neglect and lacked diligence, in violation of RPC 1.1(a) and RPC 1.3, respectively, by accepting a \$3,500 retainer to obtain a medical report which he did not obtain, and by sending a letter to a potential defendant beyond the applicable statute of limitations for filing an action. Respondent failed to communicate with Hardy, in violation of RPC 1.4(b), by failing to return Hardy's calls until the grievance was filed against him, and by failing to reply to Hardy's repeated requests for information. Further, by failing to respond to letters from disciplinary authorities, respondent failed to cooperate with the ethics investigation, in violation of RPC 8.1(b). Finally, respondent misrepresented to Hardy that his litigation could proceed, despite having allowed the statute of limitations to run, in violation of RPC 8.4(c).

In the Giordano matter, respondent committed gross neglect and lacked diligence by accepting \$1,300 to file a bankruptcy petition that he never filed,

and by falsely reassuring Giordano that her case was proceeding. Respondent failed to communicate with Giordano, in violation of RPC 1.4(b), by making appointments with her to discuss her case, only to then cancel them. By failing to respond to letters from the DEC investigator, respondent failed to cooperate with the ethics investigation, in violation of RPC 8.1(b). Finally, respondent misrepresented to Giordano that her bankruptcy action was proceeding, and that he was actively pursuing her case, in violation of RPC 8.4(c).

Essentially, in both matters, respondent took a fee from the client and then abandoned the client's matter.

In sum, in both the Hardy and Giordano matters, we find that respondent violated RPC 1.1(a); RPC 1.3; RPC 1.4(b); RPC 8.1(b); and RPC 8.4(c). The sole issue left for determination is the appropriate quantum of discipline for respondent's misconduct.

Abandonment of clients almost invariably results in a suspension, the duration of which depends on the circumstances of the abandonment, the presence of other misconduct, and the attorney's disciplinary history. See, e.g., In re Nwaka, 178 N.J. 483 (2004) (three-month suspension for attorney who was disbarred in New York for abandoning one client and failing to cooperate with New York ethics authorities, by neither filing an answer to the complaint nor

complying with their requests for information about the disciplinary matter; prior three-month suspension); In re Hoffmann, 163 N.J. 4 (2000) (three-month suspension in a default matter; the attorney closed his office without notifying four clients; he also was guilty of gross neglect, lack of diligence, failure to communicate with clients, failure to protect clients' interests upon termination of representation, and failure to cooperate with disciplinary authorities; prior reprimand and a three-month suspension); In re Perdue, 240 N.J. 43 (2019) (in three consolidated default matters, six-month suspension imposed on attorney who, in two of the matters, abandoned his clients; the attorney also exhibited gross neglect and lack of diligence, failed to communicate with the clients, failed to return the file to one of the clients, and made misrepresentations to the clients; in all three matters, the attorney failed to submit a written reply to the grievance); In re Bowman, 175 N.J. 108 (2003) (six-month suspension for abandonment of two clients, misrepresentations to disciplinary authorities, pattern of neglect, and misconduct in three client matters, including gross neglect, lack of diligence, failure to communicate with the clients, failure to explain a matter to the extent reasonably necessary to permit the client to make an informed decision about the representation, failure to provide a written fee agreement, failure to protect a client's interests upon termination of representation, and

misrepresenting the status of a matter to a client); In re Milara, 237 N.J. 431 (2019) (in two default matters, one-year suspension imposed on attorney for the totality of his misconduct, which included the abandonment of two clients, one of whom suffered serious harm as a result; misrepresentations to the clients, failure to file an affidavit of compliance with R. 1:20-20 following a temporary suspension for failure to cooperate with the Office of Attorney Ethics and a second temporary suspension for failure to comply with a fee arbitration determination, and other conduct prejudicial to the administration of justice; at the time, a censure was pending before the Court, which entered an Order confirming our decision); In re Rosenthal, 208 N.J. 485 (2012) (in seven default matters, one-year suspension imposed on attorney who exhibited gross neglect and a pattern of neglect in two matters; lacked diligence in four matters; failed to keep the client reasonably informed about the status of a matter and to promptly comply with reasonable requests for information in seven matters; failed to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation in one matter; charged an unreasonable fee in three matters; failed to communicate in writing the basis or rate of his fee in one matter; failed to expedite litigation in one matter; failed to cooperate with disciplinary authorities in seven matters; engaged in

dishonesty in two matters; and engaged in conduct prejudicial to the administration of justice in two matters; he also abandoned six of the seven clients; attorney had unblemished disciplinary history in his more than twenty years at the bar); In re Basner, 232 N.J. 164 (2018) (motion for reciprocal discipline; two-year suspension imposed on attorney who exhibited gross neglect in eight matters, engaged in a pattern of neglect, exhibited lack of diligence in ten matters, failed to keep the client reasonably informed about the status of a matter and promptly comply with reasonable requests for information in seven matters; failed to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation in eight matters; failed to comply with the recordkeeping requirements of R. 1:21-6; failed to withdraw from the representation of a client when the representation violated the RPCs or other law; upon termination of representation, failed to protect the interests of the client in three matters; asserted a frivolous claim in two matters; failed to expedite litigation in two matters; made a false statement of material fact or law to a tribunal in two matters; knowingly made a false statement of material fact to disciplinary authorities in four matters; engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in five matters; and engaged in conduct prejudicial to the administration of justice in four

matters; in aggravation, we considered the widespread and persistent nature of the attorney's misconduct, which, among other things, resulted in two of his clients serving prison terms); In re Cataline, 223 N.J. 269 (2015) (default; two-year suspension imposed on attorney who exhibited gross neglect in three matters, failed to cooperate with the district ethics committee in all four matters, and ignored the client's request for the return of his original documents in one matter; in aggravation, the attorney engaged in a pattern of neglect and abandoned the four clients by closing her office without notice to the clients or attorney regulatory authorities, and by failing to maintain an office telephone; prior reprimand); and In re Franklin, 236 N.J. 453 (2019) (retroactive three-year suspension imposed on attorney who abandoned an unknown number of clients and engaged in an improper fee-sharing arrangement with a company marketed as a service provider to handle and defend foreclosure and real estate mitigation against Florida mortgage lenders).

When an attorney fails to cooperate with disciplinary authorities, and previously has been disciplined, but the attorney's ethics record is not serious, reprimands have been imposed. See, e.g., In re Larkins, 217 N.J. 20 (2014) (default; attorney did not reply to the ethics investigator's attempts to obtain information about the grievance and failed to file an answer to the formal ethics

complaint; although we noted that a single violation of RPC 8.1(b), in a default matter, does not necessitate enhancement of the discipline from an admonition to a reprimand, a reprimand was imposed based on a prior admonition and, more significantly, a 2013 censure, also in a default matter, in which the attorney had failed to cooperate with an ethics investigation).

Misrepresentations to clients require the imposition of a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). A reprimand still may be imposed even if the misrepresentation is accompanied by other, non-serious ethics infractions. See, e.g., In re Dwyer, 223 N.J. 240 (2015) (attorney made a misrepresentation by silence to his client, by failing to inform her, despite ample opportunity to do so, that her complaint had been dismissed, a violation of RPC 8.4(c); the complaint was dismissed because the attorney had failed to serve interrogatory answers and ignored court orders compelling service of the answers, violations of RPC 1.1(a), RPC 1.3, and RPC 3.2; the attorney also violated RPC 1.4(b) by his complete failure to reply to his client's requests for information or to otherwise communicate with her; the attorney never informed his client that a motion to compel discovery had been filed, that the court had entered an order granting the motion, or that the court had dismissed her complaint for failure to serve the interrogatory answers and to comply with the court's order, violations

of RPC 1.4(c)); In re Ruffolo, 220 N.J. 353 (2015) (knowing that the complaint had been dismissed, the attorney assured the client that his matter was proceeding apace, and that he should expect a monetary award in the near future; both statements were false, in violation of RPC 8.4(c); the attorney also exhibited gross neglect and a lack of diligence by allowing his client's case to be dismissed, not working on it after filing the initial claim, and failing to take any steps to prevent its dismissal or ensure its reinstatement thereafter, violations of RPC 1.1(a) and RPC 1.3; the attorney also violated RPC 1.4(b) by failing to promptly reply to the client's requests for status updates); and In re Falkenstein, 220 N.J. 110 (2014) (attorney led the client to believe that he had filed an appeal and concocted false stories to support his lies, a violation of RPC 8.4(c); he did so to conceal his failure to comply with his client's request that he seek post-judgment relief, violations of RPC 1.1(a) and RPC 1.3; because he did not believe the appeal had merit, the attorney's failure to withdraw from the case was a violation of RPC 1.16(b)(4); the attorney also practiced law while ineligible, although not knowingly, a violation of RPC 5.5(a)).

Standing alone, respondent's gross neglect; lack of diligence; failure to communicate; failure to cooperate; and misrepresentation warrant at least a censure. However, respondent accepted legal fees from Hardy (\$3,500) and

Giordano (\$1,300), and performed little or no legal services for the clients, misconduct that constituted abandonment. Considering all of respondent's ethical violations, and in line with the abandonment cases cited above, a suspension is required.

In further aggravation, the default status of this matter must be considered. “[A] respondent’s default or failure to cooperate with the investigative authorities acts as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced.” In re Kivler, 193 N.J. 332, 342 (2008) (citations omitted). In light of respondent’s default, an increased term of suspension is warranted.

In crafting the appropriate quantum of discipline, we also must weigh, in aggravation, respondent’s failure to learn from his past mistakes. The Court has signaled an inclination toward progressive discipline and stern treatment of repeat offenders. In such situations, enhanced discipline is appropriate. See In re Kantor, 180 N.J. 226 (2004) (disbarment for abandonment of clients and repeated failure to cooperate with the disciplinary system).

Specifically, in 2017, the Court censured respondent for misconduct similar to the instant matters, including lack of diligence, lack of communication, and misrepresentation. In re Manganello, 229 N.J. 116 (2017).

In this disciplinary matter, respondent abandoned two clients, and then committed further misconduct in an attempt to conceal his inaction in advancing their interests. He has demonstrated an inability to learn from his past mistakes and engaged in a pattern of inflicting harm on his clients.

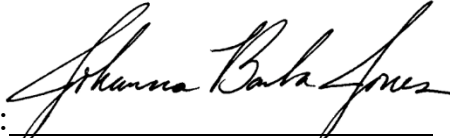
Due to these significant aggravating factors, a six-month suspension is the minimum appropriate quantum of discipline. Moreover, as a condition, we require respondent to disgorge his entire fee in both the Hardy and Giordano matters within thirty days of the date of the Court's Order in this case.

On balance, we determine that a six-month consolidated suspension, with the above condition, is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

Vice-Chair Gallipoli and Members Rivera and Zmirich voted for a one-year suspension, with the same condition imposed by the majority.

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
Bruce W. Clark, Chair

By: 

Johanna Barba Jones
Chief Counsel

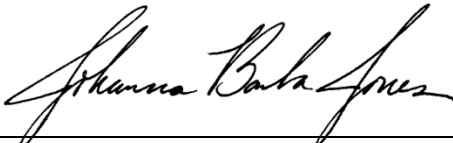
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Christopher Michael Manganello
Docket Nos. DRB 20-108 and 20-109

Decided: March 29, 2021

Disposition: Six-Month Suspension

<i>Members</i>	Six-Month Suspension	One-Year Suspension	Recused	Did Not Participate
Clark	X			
Gallipoli		X		
Boyer	X			
Hoberman	X			
Joseph	X			
Petrou	X			
Rivera		X		
Singer	X			
Zmirich		X		
Total:	6	3	0	0



Johanna Barba Jones
Chief Counsel