

Supreme Court of New Jersey  
Disciplinary Review Board  
Docket No. DRB 21-270  
District Docket No. XIV-2021-0083E

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In the Matter of  
Sarah Ruth Barnwell  
An Attorney at Law

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Decision

Argued: March 17, 2022

Decided: June 20, 2022

Hillary K. Horton appeared on behalf of the Office of Attorney Ethics.

Kim D. Ringler 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 on a motion for reciprocal discipline filed by the Office of Attorney Ethics (the OAE), pursuant to R. 1:20-14(a), following the March 3, 2021 order of the Court of Appeals of Maryland suspending respondent for sixty days.

The OAE asserted that, in the Maryland matter, respondent was determined to have violated the equivalent of New Jersey's RPC 1.1(a) (gross neglect); RPC 1.2(a) (failure to abide by the client's decisions concerning the scope and objectives of representation); RPC 1.3 (lack of diligence); RPC 1.4(b) (failure to communicate with a client);<sup>1</sup> RPC 1.15(a) (failure to safeguard client funds); RPC 1.15(c) (failure to segregate property in which both the attorney and another party have an interest); RPC 1.16(d) (failure to refund the unearned portion of the fee to client upon termination of representation); RPC 8.4(a) (violating or attempting to violate the Rules of Professional Conduct); and RPC 8.4(d) (conduct prejudicial to the administration of justice).

For the reasons set forth below, we determine to grant the motion for reciprocal discipline and impose an admonition.

Respondent earned admission to the New Jersey and Maryland bars in 2008, to the District of Columbia bar in 2009, and to the Pennsylvania bar in 2011. She has no disciplinary history in New Jersey. During the time relevant to this matter, respondent maintained a practice of law with offices in Bethesda, Maryland, and Villanova, Pennsylvania.

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<sup>1</sup> The OAE's motion and supporting brief, which serve as the charging documents in this matter, did not specify which subsection of RPC 1.4 respondent's misconduct implicated. The record, however, makes clear that the OAE charged a violation of subsection (b).

On December 2, 2020, the Attorney Grievance Commission of Maryland filed a petition instituting formal disciplinary charges against respondent. On February 12, 2021, respondent was served with the petition. Shortly thereafter, on March 3, 2021, respondent and the Attorney Grievance Commission filed a joint petition for a sixty-day suspension in the Court of Appeals of Maryland, in the Circuit Court for Montgomery County.

Respondent admitted to the following facts in support of the joint petition. On July 2, 2018, respondent spoke to Melanie Jackson, who was seeking representation in a potential action to obtain custody of her grandson during her son's incarceration. On the same day, Jackson signed a retainer agreement with respondent that identified a limited scope of work, including: a review of the case file; a thirty-minute telephone consultation; and a letter making recommendations. The agreement stated that the retainer would be billed against respondent's hourly rate. Respondent did not explain the terms of the agreement to Jackson. Jackson, however, understood the retainer to be a flat fee for the representation. On July 3, 2018, Jackson paid respondent \$206, via credit card.<sup>2</sup>

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<sup>2</sup> According to the petition, respondent's fee for this initial limited representation was \$200. The retainer agreement permitted Jackson to select a preferred payment method and stated that she would be charged a three-percent transaction fee for credit card transactions.

On July 3, 2018, Jackson provided respondent with the names and addresses of all parties to the custody dispute. Respondent, however, failed to provide Jackson with a letter making recommendations, as required by the retainer agreement, and never provided Jackson with an accounting of her time or use of the fee.

Subsequently, on July 8, 2018, Jackson sent an e-mail to respondent, stating that she wanted to file a petition for custody on behalf of her son. That same day, respondent provided Jackson with a second retainer agreement, providing for the “preparation of a petition for custody in Montgomery County Circuit Court” as part of the scope of work. The agreement required a fee of \$750 to be billed against respondent’s hourly rate, however, according to Jackson, respondent again failed to explain the terms of the retainer agreement to her. On July 9, 2018, Jackson paid respondent \$772.50, via credit card.

Although Jackson completed the custody questionnaire, respondent never prepared the promised custody petition. Further, between September 2018 and January 2019, respondent failed to reply to Jackson’s numerous e-mails. Respondent, however, claimed that she communicated with Jackson, by telephone, in November 2018.

On January 3, 2019, approximately six months after accepting the representation, respondent informed Jackson, in writing, that she was unable to further assist Jackson in connection with the custody dispute.

On January 4, 2019, Jackson replied to respondent's e-mail, asking for an explanation for the termination of the representation, but respondent again failed to reply. Respondent also failed to provide Jackson with an accounting of her time or use of the two retainer fees and did not return any unearned portion of the fees.

According to Jackson, respondent never informed her that custody was rarely awarded to grandparents under Maryland law or that Jackson could not file a custody petition on behalf of her son.

On January 10, 2019, Jackson filed a complaint with the Maryland Office of Bar Counsel. Bar Counsel's investigation into respondent's attorney trust account (ATA) records revealed that respondent made fifteen cash withdrawals from her ATA, between July 2, 2018 and June 5, 2019, but that respondent had not misappropriated client funds.

For her misconduct, respondent admitted that she violated the following Maryland Rules of Professional Conduct:

- (1) Md. RPC 1.1 (competence);<sup>3</sup>

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<sup>3</sup> The parenthetical descriptors used here for each violation of the Maryland Rules of  
(footnote cont'd on next page)

- (2) Md. RPC 1.2 (scope of representation and allocation of authority between client and attorney);<sup>4</sup>
- (3) Md. RPC 1.3 (diligence);
- (4) Md. RPC 1.4 (communication);
- (5) Md. RPC 1.15(a) (safekeeping);
- (6) Md. RPC 1.15(c) (safekeeping);
- (7) Md. RPC 1.16(d) (declining or terminating representation);
- (8) Md. RPC 8.4(a) (misconduct);
- (9) Md. RPC 8.4(d) (misconduct); and
- (10) Md. Rule 19-410.<sup>5</sup>

[ExB¶4;OAEb3.]<sup>6</sup>

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Professional Conduct are copied verbatim from the joint petition, as reiterated by the OAE in its brief.

<sup>4</sup> The joint petition did not indicate which subsection of Md. RPC 1.2 or Md. RPC 1.4 respondent stipulated to having violated.

<sup>5</sup> Md. Rule 19-410 prohibits an attorney from taking a cash withdrawal from their attorney trust account. That same conduct is prohibited in New Jersey by R. 1:21-6(c)(2) (“ATM or cash withdrawals from all attorney trust accounts are prohibited”), the violation of which is considered to be a violation of RPC 1.15(d) (“A lawyer shall comply with the provisions of R. 1:21-6 (‘Recordkeeping’) of the Court Rules”). The OAE’s motion and supporting brief, which serve as the charging documents in this matter, did not charge respondent with a violation of RPC 1.15(d).

<sup>6</sup> “OAEb” refers to the OAE’s December 17, 2021 brief in support of its motion for reciprocal discipline. “ExB” refers to the March 3, 2021 joint petition filed by the Attorney  
(footnote cont’d on next page)

The parties also agreed to the following mitigating factors: (1) the absence of prior discipline; (2) the absence of a dishonest or selfish motive; (3) respondent's timely, good faith effort to make restitution; (4) respondent's remedial action to bring her ATA into compliance with the governing rules in Maryland; and (5) respondent's remorse.

On March 3, 2021, the Court of Appeals of Maryland granted the joint petition and suspended respondent for sixty days, effective April 2, 2021.

On March 10, 2021, respondent provided a copy of the March 3, 2021 suspension order to the OAE, as R. 1:20-14(a)(1) requires.

In its submission to us, the OAE urged us to find that respondent violated the equivalents of New Jersey RPC 1.1(a); RPC 1.2(a); RPC 1.3; RPC 1.4(b); RPC 1.15(a); RPC 1.15(c); RPC 1.16(d); RPC 8.4(a); and RPC 8.4(d). Specifically, the OAE asserted that respondent's gross mishandling of Jackson's custody matter, her failure to communicate with Jackson or to advance the case, and her failure to provide any invoicing or a refund of unearned fees to Jackson, violated RPC 1.1(a); RPC 1.2(a); RPC 1.3; RPC 1.4(b); and RPC 1.16(d). The OAE provided no analysis, however, regarding the applicability of RPC 1.15(a); RPC 1.15(c); RPC 8.4(a); or RPC 8.4(d) to the facts presented.

The OAE correctly stated, in its brief to us and during oral argument, that, based upon New Jersey disciplinary precedent, respondent's unethical conduct warrants lesser discipline than the sixty-day term of suspension imposed in Maryland. The OAE relied on New Jersey disciplinary precedent, discussed below, to conclude that respondent's misconduct warranted an admonition.

The OAE emphasized, in mitigation, that respondent has no prior discipline in New Jersey in her thirteen years at the bar; she accepted responsibility and cooperated with the Maryland disciplinary authorities; she had no selfish motive; she expressed remorse for her misconduct; and only one client was impacted.

Respondent, through counsel, stated that she agreed with the OAE's recommended discipline and emphasized, during oral argument, that she previously has had an unblemished disciplinary record in all jurisdictions in which she is licensed; she cooperated with the disciplinary authorities in both jurisdictions; she was not motivated by self-interest; and only one client was impacted. Respondent also confirmed for us that, in July 2020, she had made full restitution to Jackson.

Following a review of the record, we determine to grant the OAE's motion for reciprocal discipline and impose discipline for some of the Rules of Professional Conduct identified by the OAE.



Pursuant to R. 1:20-14(a)(5), “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.” Thus, with respect to motions for reciprocal discipline, “[t]he sole issue to be determined . . . shall be the extent of final discipline to be imposed.” R. 1:20-14(b)(3).

That said, the New Jersey Supreme Court has made clear that it will evaluate our decision to grant a Motion for Reciprocal Discipline under R. 1:20-16(c) to determine whether clear and convincing evidence supports each ethics violation upon which we recommend discipline. In re Barrett, 238 N.J. 517, 521-522 (2019).<sup>7</sup> In so doing, the Court in Barrett characterized R. 1:20-14 reciprocal discipline as “the process by which New Jersey applies its ethics rules to an attorney admitted in New Jersey, following the imposition of discipline in an

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<sup>7</sup> This case does not raise the issue of differing burdens of proof that the Court directly addressed in Barrett. In Maryland, as in New Jersey, the standard of proof in attorney disciplinary proceedings is clear and convincing evidence. Atty. Griev. Comm’n of Md. v. Hodes, 105 A.3d 533, 552 (Md. 2014); Atty. Griev. Comm’n of Md. v. Glenn, 671 A.2d 463, 474 (Md. 1996). Clear and convincing evidence is evidence that is “more than a mere preponderance but not beyond a reasonable doubt.” Atty. Griev. Comm’n of Md. v. Mooney, 753 A.2d 17, 29 (Md. 2000) (quoting Berkey v. Delia, 413 A.2d 170, 178 (Md. 1980), and Whittington v. State, 262 A.2d 75, 77 n.3 (Md. 1970)). Respondent stipulated to the facts and charged violations in the Maryland disciplinary proceedings and, here, did not object to the charged RPCs and agreed with the OAE’s recommended quantum of discipline.

ethics proceeding conducted by a sister jurisdiction.” Id. at 522 (quoting In re Sigman, 220 N.J. 141, 153 (2014)). Our review, like that of the Court, therefore “involves ‘a limited inquiry, substantially derived from and reliant on the foreign jurisdiction’s disciplinary proceedings.’” Ibid.

Consistent with that body of law, we have on some occasions declined to find particular Rules of Professional Conduct charged by the OAE in its motion. See, e.g., In the Matter of Richard C. Gordon, DRB 20-209 (April 1, 2021), at 19-20 (granting the OAE’s motion for reciprocal discipline but declining to find a violation pursuant to RPC 8.4(d) where the underlying facts did not support the charge), so ordered, 249 N.J. 15 (2021); In the Matter of Amanda J. Iannuzzelli, DRB 20-129 (April 1, 2021), at 27 (granting the OAE’s motion for reciprocal discipline but declining to find violations pursuant to RPC 3.1 or RPC 1.16(a)(2) based upon insufficient evidence in the record), so ordered, 249 N.J. 12 (2021) (imposing three-year suspension rather than disbarment); In the Matter of Steven Jeffrey Kwestel, DRB 20-016 (December 9, 2020), at 9 (granting the OAE’s motion for reciprocal discipline but declining to find violations pursuant to RPC 1.1(a), RPC 5.3(c)(1), and RPC 8.4(c) due to the absence of factual support in the record), so ordered, 245 N.J. 493 (2021); In the Matter of Joseph Vaccaro, DRB 20-012 (December 9, 2020), at 7 (granting the OAE’s motion for reciprocal discipline but declining to find violations pursuant

to RPC 1.1(a) or RPC 8.4(d) based upon insufficient evidence in the record), so ordered, 245 N.J. 492 (2021).

Consistently, 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.

In our view, subsection (E) applies in this matter because the unethical conduct “established” by this record within the meaning of the Rule warrants substantially different discipline.

This record contains clear and convincing evidence that respondent violated RPC 1.1(a); RPC 1.2(a); RPC 1.3; RPC 1.4(b); and RPC 1.16(d) in

connection with a single client matter. However, our “limited inquiry, substantially derived from and reliant on” Maryland’s disciplinary proceedings leaves us unable to conclude that respondent violated RPC 1.15(a); RPC 1.15(c); RPC 8.4(a); and RPC 8.4(d). We therefore decline to impose New Jersey discipline reflecting those charges, notwithstanding respondent’s admission to same.

Our review of the Maryland record shows that respondent agreed to represent Jackson in a child custody matter and then failed to take any affirmative steps to advance the matter on Jackson’s behalf. Respondent failed to prepare a promised letter making recommendations – legal work explicitly included in the parties’ initial retainer agreement. Respondent also failed to prepare a custody petition, as was explicitly contemplated by the parties’ second retainer agreement. Over the course of the approximately six-month period of the representation, respondent repeatedly failed to respond to Jackson’s reasonable requests for information and updates regarding her matter. Moreover, respondent never advised Jackson that the likelihood of success in such a custody dispute was, at best, minimal. Those facts establish that respondent’s mishandling of Jackson’s matter violated RPC 1.1(a); RPC 1.2(a); RPC 1.3; and RPC 1.4(b).

Further, by terminating her attorney-client relationship without any

explanation to Jackson, and by subsequently failing to provide any type of billing, invoice, or refund to Jackson, respondent also violated RPC 1.16(d).

Reliant as we are upon the Maryland record, we are unable to derive clear and conclusive evidence that respondent's admitted conduct violated New Jersey RPC 1.15(a) and RPC 1.15(c). Although respondent admitted that she made fifteen cash withdrawals from her ATA, between July 2, 2018 and June 5, 2019, in violation of RPC 1.15(a) and RPC 1.15(c), this admission alone is insufficient to support a violation pursuant to either subsection of the New Jersey Rule.

Thus, on this record, it is impossible to discern whether or how respondent's cash withdrawals were violative of RPC 1.15(a) or (c), the only two subsections that the OAE alleged respondent violated.<sup>8</sup> Further, the OAE's

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<sup>8</sup> Although the OAE asserted in its motion that Md. RPC 1.15(c) is substantially similar to RPC 1.15(c), we disagree. RPC 1.15(c) states that "[w]hen in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved." Md. RPC 1.15(c), on the other hand, states that "[u]nless the client gives informed consent, confirmed in writing, to a different arrangement, an attorney shall deposit legal fees and expenses that have been paid in advance into a client trust account and may withdraw those funds for the attorney's own benefit only as fees are earned or expenses incurred." In fact, there is no equivalent RPC violation in New Jersey for the type of misconduct governed by Md. RPC 1.15(c). To the contrary, in New Jersey, a general retainer may be deposited into the lawyer's business account, unless the client requires otherwise. In re Stern, 92 N.J. 611, 619 (1983) (observing that under predecessor Disciplinary Rule 9-102(A), "absent an explicit understanding that the retainer fee be separately maintained, a general retainer fee need not be deposited in an attorney's trust account").

motion did not articulate a basis for these charges other than the fact that respondent had stipulated to having violated similar provisions under the Maryland Rules of Professional Conduct. In the absence of any factual support in the record, we cannot sustain a violation pursuant to RPC 1.15(a) or RPC 1.15(c).

We are similarly unable to derive from the Maryland record evidence that respondent violated RPC 8.4(a). That Rule prohibits an attorney from violating or attempting to violate the Rules of Professional Conduct, knowingly assisting or inducing another to do so, or doing so through the acts of another. Here, the RPC 8.4(a) violation appears to be based on respondent's violation of other, more specific RPCs – a theory we historically have rejected. Moreover, it would be superfluous to find a violation of RPC 8.4(a) when we are able to find more specific violations for respondent's mishandling of her client's case. Accordingly, we determine that the record does not support a violation of RPC 8.4(a).

We also decline the OAE's invitation to view respondent's misconduct as the equivalent of a violation of RPC 8.4(d). Respondent's gross neglect in her handling of her client's custody matter is adequately addressed by her other RPC violations. Further, the record contains no evidence that respondent's conduct unduly delayed or prejudiced court operations.

In sum, we grant the motion for reciprocal discipline and find that respondent violated RPC 1.1(a); RPC 1.2(a); RPC 1.3; RPC 1.4(b); and RPC 1.16(d). We determine, however, that the evidence set forth in the Maryland record does not prove, by the clear and convincing standard, that respondent violated RPC 1.15(a); RPC 1.15(c); RPC 8.4(a); and RPC 8.4(d). We proceed to evaluate the proper quantum of discipline for respondent's misconduct as required by R. 1:20-14(a)(4).

As the OAE correctly observed, conduct involving gross neglect, lack of diligence, and failure to communicate with clients results in an admonition or a reprimand, depending on the number of client matters involved, the gravity of the offenses, the harm to the clients, the presence of additional violations, and the attorney's disciplinary history. See, e.g., In the Matter of Esther Maria Alvarez, DRB 19-190 (September 20, 2019) (admonition for an attorney who was retained to obtain a divorce for her client but, for the next nine months, failed to take any steps to pursue the matter, and failed to reply to all but one of the client's requests for information about the status of her case, violative of RPC 1.1(a) and RPC 1.4(b); in another matter, the attorney agreed to seek a default judgment, but waited more than eighteen months to file the necessary papers with the court; although the attorney obtained a default judgment, the court later vacated it due to the passage of time, which precluded a determination

on the merits; violations of RPC 1.1(a) and RPC 1.3); In the Matter of Michael J. Pocchio, DRB 18-192 (October 1, 2018) (admonition for attorney who filed a divorce complaint and permitted it to be dismissed for failure to prosecute the action; he also failed to seek reinstatement of the complaint, and failed to communicate with the client; violations of RPC 1.1(a); RPC 1.3; RPC 1.4(b); and RPC 3.2); In re Burro, 235 N.J. 413 (2018) (reprimand for attorney who grossly neglected and lacked diligence in an estate matter for ten years and failed to file New Jersey Inheritance Tax returns, resulting in the accrual of \$40,000 in interest and the imposition of a lien on property belonging to the executrix, in violation of RPC 1.1(a) and RPC 1.3; the attorney also failed to keep the client reasonably informed about events in the case (RPC 1.4(b)); to return the client file upon termination of the representation (RPC 1.16(d)); and to cooperate with the ethics investigation (RPC 8.1(b)); in aggravation, we considered the significant harm to the client and the attorney's prior private reprimand; in mitigation, the attorney expressed remorse and had suffered a stroke that forced him to cease practicing law); In re Abasolo, 235 N.J. 326 (2018) (reprimand for attorney who grossly neglected and lacked diligence in a personal injury case for two years after filing the complaint; after successfully restoring the matter to the active trial list, the attorney failed to pay a \$300 filing fee, permitting the defendants' order of dismissal with prejudice to stand, in violation of RPC 1.1(a)



and RPC 1.3; in addition, for four years, the attorney failed to keep the client reasonably informed about the status of the case, in violation of RPC 1.4(b)).<sup>9</sup>

Similarly, an admonition is the appropriate sanction for an attorney's failure to promptly refund the unearned portion of a fee. See, e.g., In re Gourvitz, 200 N.J. 261 (2009); In the Matter of Larissa A. Pelc, DRB 05-165 (July 28, 2005); In the Matter of Stephen D. Landfield, DRB 03-137 (July 3, 2003).

Although respondent's gross neglect, lack of diligence, and failure to communicate, combined with her other misconduct, could justify a reprimand, we also consider mitigating and aggravating factors in crafting the appropriate discipline.

In mitigation, respondent has an unblemished disciplinary history in more than thirteen years at the bar. She accepted responsibility for her misconduct by stipulating to the facts and the violations in both jurisdictions, thereby conserving disciplinary resources. Respondent also made full restitution to her client prior to the commencement of the formal ethics proceeding in Maryland, and has expressed remorse. Additionally, her misconduct impacted only one

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<sup>9</sup> In the Matter of Jared A Geist, DRB 20-073 (May 26, 2020), cited by the OAE, is in accord. Geist was admonished for violating RPC 1.1(a), RPC 1.3, RPC 1.4(b), and RPC 1.4(c) for his failure to file an opposition to a summary judgment motion, despite having obtained an extension. Further, he failed to appear at a hearing or trial, and failed to advise his clients of the consequences of failing to complete an information subpoena, including the resulting issuance of arrest warrants. We considered, in mitigation, Geist's unblemished career, that the client was made whole, and that Geist partially accepted responsibility for his misconduct.

client, as opposed to multiple clients, which would warrant enhanced discipline. Finally, respondent has completed her sixty-day suspension in Maryland and has been reinstated in that jurisdiction.

There are no aggravating factors.

On balance, we determine that an admonition is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

Member Joseph voted to impose a reprimand weighing, in aggravation, the harm to the client.

Member Campelo was absent.

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  
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.),  
Chair



By: \_\_\_\_\_  
Johanna Barba Jones  
Chief Counsel

SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Sarah Ruth Barnwell  
Docket No. DRB 21-270

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Argued: March 17, 2022

Decided: June 20, 2022

Disposition: Admonition

<i>Members</i>	Admonition	Reprimand	Absent
Gallipoli	X		
Singer	X		
Boyer	X		
Campelo			X
Hoberman	X		
Joseph		X	
Menaker	X		
Petrou	X		
Rivera	X		
Total:	7	1	1



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Johanna Barba Jones  
Chief Counsel