

B.

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 07-085
District Docket No. IIIA-06-018E

IN THE MATTER OF
HENRY A. WALSH, JR.
AN ATTORNEY AT LAW

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Decision
Default [R. 1:20-4(f)]

Decided: August 7, 2007

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

This matter came before us on a certification of default
filed by the District IIIA Ethics Committee (DEC), pursuant to
R. 1:20-4(f). The complaint charged that respondent violated R.
1:20(3)(g)(3), more properly a violation of RPC 8.1(b)
(failure to cooperate with disciplinary authorities). We
determine to censure respondent.

Respondent was admitted to the New Jersey bar in 1993. At the relevant time, he maintained a law office in Lakewood, New Jersey.

In an earlier default matter, respondent was reprimanded for failing to pursue a disputed insurance claim on behalf of a client, failing to communicate with the client, and failing to reply to the grievance, thereby violating RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to communicate with client), and RPC 8.1(b) (failure to cooperate with disciplinary authorities), respectively. In re Walsh, 188 N.J. 276 (2006).

Service of process was proper in this matter. On November 29, 2006, the DEC mailed a copy of the complaint to respondent's home office, 162 Mountain View Drive, Lakewood, New Jersey 08701, by regular and certified mail. The certified mail receipt, signed by respondent, was returned indicating delivery on December 4, 2006. The regular mail was not returned.

Respondent did not file an answer. Thus, on January 11, 2007, the DEC sent a second letter (incorrectly dated November 29, 2006) to the same address, by regular and certified mail, advising respondent that, if he did not file an answer to the complaint within five days, the matter would be certified directly to us for the imposition discipline, and the complaint would be amended to include a willful violation of RPC 8.1(b).

The certified mail receipt, showing delivery on January 12, 2007, was signed by respondent. The regular mail was not returned.

Because the "five-day letter" was incorrectly dated, on February 9, 2007, the DEC sent respondent another "five-day letter" to the same address, by certified mail. The certified mail receipt was returned showing delivery on February 12, 2007, signed by respondent.

As of the date of the certification of the record, February 22, 2007, respondent had not filed an answer to the complaint.

The complaint alleged that Kathleen Gallagher, the grievant, retained respondent, in February 2006, in connection with a domestic relations matter. Gallagher believed that respondent had prepared a divorce complaint and other paperwork in her behalf. Because Gallagher was unable to contact respondent despite her numerous attempts, she filed a grievance against him on May 23, 2006.

A DEC investigation ensued. However, respondent failed to reply to the DEC's numerous letters and one telephone call, requesting information about the grievance. Gallagher, too, became uncooperative and did not reply to the DEC's telephone calls and letters. As a result, the DEC was unable to conclude, from the paperwork that Gallagher had submitted, that respondent

had been formally retained or that he had committed any ethics infractions. Therefore, the only charge in the complaint relates to respondent's failure to cooperate with the DEC investigation.

Following a review of the record, we find that the facts recited in the complaint support the charge of unethical conduct. Because of respondent's failure to file an answer, the allegation that respondent failed to cooperate with disciplinary authorities, a violation of RPC 8.1(b), is deemed admitted. R. 1:20-4(f).

Ordinarily, admonitions are imposed for failure to cooperate with disciplinary authorities, if the attorney does not have an ethics history. In the Matter of Kevin R. Shannon, DRB 04-512 (June 22, 2004) (admonition for attorney who did not promptly reply to the committee investigator's requests for information about the grievance); In the Matter of Keith O. D. Moses, DRB 02-248 (October 23, 2002) (admonition for failure to reply to the committee's requests for information about two grievances); In the Matter of Jon Steiger, DRB 02-199 (July 22, 2002) (admonition for failure to reply to the district ethics committee's numerous communications regarding a grievance); In the Matter of Grafton E. Beckles, II, DRB 01-395 (December 21, 2001) (admonition for attorney who did not cooperate with disciplinary authorities during the investigation and hearing of

a grievance); In the Matter of Andrew T. Brasno, DRB 97-091 (June 25, 1997) (admonition for failure to reply to the ethics grievance and failure to turn over a client's file); and In the Matter of Mark D. Cubberley, DRB 96-090 (April 19, 1996) (admonition for failure to reply to the ethics investigator's requests for information about the grievance).

If the attorney has been disciplined before, but the attorney's ethics record is not serious, then reprimands have been imposed. See, e.g., In re Wood, 175 N.J. 586 (2003) (reprimand for failure to cooperate with disciplinary authorities; the attorney had received an admonition for similar conduct); In re DeBosh, 174 N.J. 336 (2002) (in addition to violating RPC 8.1(b), the attorney had a prior three-month suspension); and In re Williamson, 152 N.J. 489 (1998) (reprimand for failure to cooperate with disciplinary authorities; prior private reprimand for failure to carry out a contract of employment with a client in a matrimonial matter and failure to surrender the client's file to a new attorney).

Here, an admonition would be insufficient because respondent has been disciplined before; in 2006, he received a reprimand in a case that was before us as a default. The present matter, too, proceeded on a default basis because of respondent's failure to file an answer to the complaint. In

default matters, the discipline for the found ethics violations is enhanced to reflect the attorney's failure to cooperate with disciplinary authorities as an aggravating factor. In the Matter of Robert J. Nemshick, DRB 03-364, 03-365, and 03-366 (March 11, 2004) (slip op. at 6). We, therefore, determine that the appropriate level of discipline in this case is a censure.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
William J. O'Shaughnessy, Chair

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


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

In the Matter of Henry A. Walsh, Jr.
Docket No. DRB 07-085

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Disposition: Censure

Members	Suspension	Censure	Admonition	Disqualified	Did not participate
O'Shaughnessy		X			
Pashman		X			
Baugh		X			
Boylan		X			
Frost		X			
Lolla		X			
Neuwirth		X			
Stanton		X			
Wissinger		X			
Total:		9			


Julianne K. DeCore
Chief Counsel