SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 07-251
District Docket No. IIIB-06-12E

IN THE MATTER OF

AVIS COLE WILLIAMS

AN ATTORNEY AT LAW

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

Decided: December 18, 2007

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

This matter was before us on a certification of default filed by the District IIIB Ethics Committee (DEC), pursuant to R. 1:20-4(f). It arose out of respondent's representation of a defendant in a criminal proceeding.

The complaint charged respondent with gross neglect (RPC 1.1(a)), failure to consult with the client and, following the

consultation, to abide by the client's decisions (RPC 1.2(a)), lack of diligence (RPC 1.3), charging an unreasonable fee (RPC 1.5(a)), failure to defend a criminal proceeding so as to require every element of the case to be established (RPC 3.1), failure to expedite litigation (RPC 3.2), knowingly making a false statement of material fact in connection with a disciplinary matter (RPC 8.1(a)), and failure to cooperate with disciplinary authorities (RPC 8.1(b)). Although we dismissed all but the RPC 8.1(b) charge, we determine that respondent's violation of that RPC, coupled with her history and the default nature of this matter, warrants a censure.

At the relevant times, respondent, who was admitted to the New Jersey bar in 1987, practiced law in Northfield, New Jersey. In May 2005, she was temporarily suspended, effective June 10, 2005, until she satisfied an award of the District I Fee Arbitration Committee and paid a sanction of $500 to the Disciplinary Oversight Committee. In re Williams, 183 N.J. 474 (2005).

On June 20, 2005, we recommended that respondent continue to be temporarily suspended for failure to comply with a District XIII Fee Arbitration Committee award and that she be

compelled to pay a $500 sanction. In re Williams, 184 N.J. 233 (2005). On July 12, 2005, the Supreme Court reinstated respondent, after she paid the awards and sanctions in full.

On June 22, 2006, in a default matter, the Supreme Court reprimanded respondent for gross neglect (RPC 1.1(a)), failure to keep a client reasonably informed about the status of a matter and to promptly comply with reasonable requests for information (RPC 1.4(a)), failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation (RPC 1.4(b)), and improper termination of representation (RPC 1.6(d)). In re Williams, 187 N.J. 118 (2006).

Service of process was proper. On March 2, 2007, the DEC mailed a copy of the complaint to respondent's office address, 5218 Atlantic Avenue, Suite 3030, Mays Landing, New Jersey 08302, by regular and certified mail. The certified mail was returned with the notation "return to sender – unclaimed – unable to forward." The regular mail was not returned.

On April 10, 2007, the DEC sent a letter to respondent at the same address, via regular and certified mail. The letter directed respondent to file an answer within five days and

informed her that, if she failed to do so, the record would be certified directly to us for the imposition of sanction. Neither the certified nor the regular mail was returned.

On April 30, 2007, Office of Attorney Ethics (OAE) deputy ethics counsel Melissa A. Czartoryski directed the DEC to re-serve respondent at either the address listed in the 2007 New Jersey Lawyers Diary and Manual or the address on file with the New Jersey Lawyers' Fund for Client Protection. On May 9, 2007, the DEC mailed the complaint to respondent at both addresses: 1442 New Road, Northfield, New Jersey 08825 and 2 Westwood Road, Mays Landing, New Jersey 08330. Each letter was sent to respondent via regular and certified mail, return receipt requested. The certification of the record does not explain whether the letters were delivered. However, the attachments to the certification reflect that, on May 11, 2007, a "Gary P. Levin" signed for the certified letter that was sent to the Northfield address.

On June 4, 2007, according to the certification, respondent submitted a "response" – but not a verified answer – to the DEC. The communication from respondent reflected that her business address was Hamilton Executive Center, 5218 Atlantic Avenue,

Suite 3030, Mays Landing, New Jersey 08330, where the complaint and the five-day letter were served. On June 6, 2007, the DEC wrote to respondent at that address and informed her that she was required to file a verified answer. Respondent was advised to do so "immediately."

On June 27, 2007, the DEC sent another letter to respondent at the Mays Landing address and informed her that, if a verified answer was not received by the DEC on or before July 6, 2007, the matter would be certified to the OAE.

As of July 12, 2007, respondent had not filed a verified answer to the complaint. Accordingly, the DEC certified this matter to us as a default. On September 17, 2007, respondent filed with us a motion to vacate the default. For the reasons expressed below, we denied the motion.

The allegations of the second count of the complaint are brief and, therefore, will be set forth first. On September 11, 2003, grievant Christian Blackman retained respondent to represent him in a criminal matter. Blackman paid respondent an unidentified sum of money "in full under a contract which stated that payment was non-refundable." Although Blackman grew dissatisfied with respondent's services "early in the process,"

he did not discharge her because he believed that he would not be entitled to a refund of the fee, which he could use to pay another lawyer.

Respondent's alleged deficiencies in her representation of Blackman were numerous. She failed to abide by his repeated requests that she file motions for a Wade hearing and for a speedy trial. Respondent also ignored his request that she hire a private investigator to interview exculpatory witnesses, notwithstanding the fact that one of these witnesses had sent (to someone not identified in the complaint) a "notarized statement recanting a prior statement given to police." In fact, respondent "did not present the notarized statement on his behalf."

The second count also alleged that respondent agreed to represent Blackman in a second criminal matter. However, she did nothing to prepare his defense. Specifically, respondent did not take Blackman's statement and did not "get information from his witnesses." Due to respondent's inadequate preparation and Blackman's lack of funds, he determined that it would be "a detriment to proceed to trial" with respondent as his counsel. Accordingly, Blackman accepted a plea bargain.

Based on these allegations, the second count of the complaint charged respondent with gross neglect, failure to consult with the client and, following the consultation, to abide by the client's decisions, lack of diligence, charging an unreasonable fee, failure to defend a criminal proceeding so as to require every element of the case to be established, and failure to expedite litigation.

In the first count of the complaint, respondent was charged with knowingly making a false statement of material fact in connection with a disciplinary matter (RPC 8.1(a)), and failure to cooperate with disciplinary authorities (RPC 8.1(b)). These charges are based on events that transpired over the course of eight months.

The factual allegations underlying the first count of the complaint are extensive. On July 6, 2004, Blackman filed a grievance with the District I Ethics Committee (DEC). On that same date, the committee wrote a letter to Blackman and informed him that, because the criminal matter had not concluded and all available appellate remedies had not been exhausted or the time period within which to seek appellate remedies had not yet expired, the DEC could not consider the grievance.

By March 6, 2006, either the time period for seeking appellate relief had expired or Blackman had exhausted his appellate remedies. Accordingly, on that date, he informed the DEC that he wanted to pursue the grievance. In May 2006, the OAE transferred the matter to the District IIIB Ethics Committee, based on an unidentified conflict of interest.

On June 7, 2006, the DEC sent a copy of the grievance to respondent at the Northfield address, which was the office address listed in the New Jersey Lawyers Diary and Manual. The letter, which was not returned by the post office, requested respondent to file a written response to the grievance by June 23, 2006. The letter was not returned to the DEC. Yet, respondent failed to comply with the DEC's request.

On June 26, 2006, the DEC wrote another letter to respondent at the same address and requested that she file a response to the grievance by July 3, 2006. Again, the letter was not returned to the DEC.

Presumably, respondent ignored the June 26, 2006 letter because, on July 7, 20006, the DEC assigned the matter to investigator Joseph M. Pinto. On July 13, 2006, Pinto wrote to Blackman, who was in prison, and asked for "more detailed

allegations of the specific acts he was alleging against the Respondent." Pinto sent a copy of the letter to respondent at the Northfield address. The letter was not returned by the post office.

On July 13, 2006, Pinto wrote a letter to respondent, informed her that he had been appointed to investigate the matter, reminded her that, under RPC 8.1(b), she was required to comply with all demands for information concerning the investigation, and requested that she produce her original file for review, that she respond in a timely fashion, and that she forward the response immediately. Pinto also told respondent stated that, if she breached her duty to cooperate with the investigation, it proceed without her.

On July 31, 2006, Pinto received Blackman's "detailed response" to his request for more information. On the same date, Pinto sent a copy of Blackman's letter to respondent and requested a written reply from her, plus a copy of her file and a response to Pinto's July 13, 2006 letter. Pinto heard nothing from respondent.

On September 5, 2006, Pinto wrote to respondent, notified her that this was her final warning and that she risked the

filing of a complaint for failure to cooperate with the investigation. Pinto requested that respondent "forward a response" within seven days. The post office did not return the letter.

On September 12, 2006, Pinto received a letter from respondent, acknowledging that she had received only his September 5, 2006 letter. Respondent explained that her office had relocated on July 1, 2006 "but [she] had [not] received all forwarded mail in a timely manner." Respondent asked Pinto to "forward all correspondence again," as the Blackman file had been in storage for more than three years. Respondent stated that she would retrieve the file from storage within the next five days.

On September 13, 2006, Pinto sent to respondent's Mays Landing office address copies of all correspondence previously sent to her. Having heard nothing from respondent, Pinto wrote to her again, on November 16, 2006, and informed her that, if he did not hear from her within seven days, a complaint would be filed against her. Neither letter was returned by the post office. Once again, Pinto did not hear from respondent.

On January 18, 2007, Pinto called respondent and confirmed that he had received nothing from her. Respondent "expressed surprise," as she had given the file to a "Mr. Fitzgerald," whom she believed was "handling the matter." Pinto asked respondent to send, within one week, a detailed letter explaining "what had occurred regarding her file." Respondent promised to do so. During this telephone conversation, respondent also told Pinto that her husband had died suddenly in November, a circumstance that had caused had caused "some delay."

As of February 12, 2007, Pinto had *received nothing* from respondent. He filed the ethics complaint against her on that date.

Before we consider the merits of the disciplinary charges against respondent, we examine her motion to vacate the default. To vacate a default, a respondent must meet a two-pronged test: offer a reasonable explanation for the failure to answer the ethics complaint and assert a meritorious defense to the underlying charges. Respondent has not satisfied the requirements for vacating the default in this matter.

In respondent's certification in support of her motion to vacate the default, she failed to assert facts sufficient to

establish a reasonable explanation for her failure to answer the complaint. Respondent claimed that she had had only three communications with the DEC, none of which was initiated by her: (1) an October 16, 2006 telephone call from Pinto, informing her that she had failed to respond to the grievance,[1] (2) a letter from DEC Chair Cynthia Earl, informing respondent that, if she did not reply to the grievance within ten days, a complaint would be filed,[2] and (3) the complaint from the DEC.[3] According to respondent, on Thanksgiving morning 2006, she discovered that her husband had died in his sleep.

After the death of respondent's husband, the chronology becomes unclear. According to respondent, three weeks later, she suffered a severe Lupus attack, which, she claims, kept her out of work until December 15, 2006. Respondent stated:

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[1] The first count of the complaint made no mention of an October 16, 2006 telephone call from Pinto to respondent or a letter from the DEC Chair, written before January 8, 2007.

[2] Respondent did not identify the date of the letter, stating only that she found it when she returned to the office on January 8, 2007, after an extended absence.

[3] Respondent did not identify the date on which she received the complaint.

> I admit that I did not take any action regarding the answering of the grievance due to being emotionally drained. I was suffering with some depression but mainly grief. I was under two (2) physician's [sic] care and both suggested that I take some additional time off as I was clearly not doing well.
>
> [RC¶4.[4]]

Although respondent stated that she had returned to work on December 15, 2006, she later claimed that she had not returned until January 8, 2007.[5] At that time, respondent found Cynthia Earl's letter, which, she admitted, had required her to reply within ten days. Respondent asserted that she had "forwarded [her] physician's notes as to [her] medical status during the time that [she] was suppose [sic] to respond as well as a letter indicating my failure to comply." Respondent did not attach to her certification a copy of the notes or the letter.

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[4] "RC" refers to the certification in support of respondent's motion to vacate the default.

[5] It is likely that respondent's lupus attack occurred on December 15, 2006, which would have been about three weeks after Thanksgiving. Moreover, January 8, 2007 was about three weeks after December 15, 2006.

Next, respondent claimed, after she received a copy of the complaint, she called "the office and was told to respond to both the grievance as well as the complaint immediately." Respondent then sent what she "believed to be an answer to the complaint as well as a detailed response to the grievance with enclosures." She admitted, "[i]n retrospect," that she sent a response to the grievance, not an answer to the complaint.

Respondent claimed, on the one hand, that she had forwarded to the DEC everything it had requested and that she had not ignored the DEC's requests. On the other hand, respondent asserted that she had been "unable to respond due to what [she] was going through." In mitigation, respondent relied upon her medical condition and personal loss.

With respect to her claimed receipt of only one piece of correspondence from the DEC during its investigation, respondent asserted that "there were many times that communication was sent to my previous address, although all of my correspondences noted our new address." She explained:

> Specifically, the office of Cole Williams & Moore, LLC moved from Atlantic Avenue in Mays Landing, NJ 08330 May 1, 2007 to 501 Scarborough Drive Third Floor Egg Harbor Township, NJ mainly due to many offices

> moving to that location and there being great problems in receiving our mail. Six Offices [sic] relocated as a result of this problem. This also was told to Ms. Earl.
>
> [RC¶11.]

Finally, respondent expressed remorse for "all that has happened" as a result of her failure to respond to the DEC in a timely manner.

Respondent's certification failed to set forth a reasonable explanation for her failure to file an answer to the complaint. The complaint was mailed to respondent on March 2, 2007, at the Mays Landing office address. The five-day letter was mailed to the same address on April 10, 2007.

The Mays Landing office address was the address that respondent had, provided to DEC investigator Pinto in September 2006, and where she claimed it had been located since July 1, 2006, and where it remained until May 1, 2007, when she relocated the office again to Egg Harbor Township. Thus, respondent's claim that the complaint and the five-day letter were sent to the wrong address is untrue.

Respondent's claim that her office relocated to Egg Harbor Township on May 1, 2007 is troubling, inasmuch as she did not

inform the DEC that her office had relocated,[6] and she wrote to the DEC on June 4, 2007, on letterhead that contained the Mays Landing address. Thus, as with the complaint and the five-day letter respondent failed to establish that she did not receive the DEC's June 27, 2007 letter, giving her one more opportunity to file an answer. Although the letter was mailed to the Mays Landing address, respondent presumably had directed the postmaster to forward the mail to the Egg Harbor address.

Moreover, this is not the first time that respondent has sought to vacate a default on the ground that the complaint was not sent to the correct address. She asserted a similar defense in seeking to vacate a default entered against her in the 2006 matter. We denied that motion as well.

Also, we are unable to accept respondent's reliance on her husband's sudden death and the resulting Lupus attack as excusable neglect in her failure to file a verified answer to the complaint. Respondent's husband died at the end of November 2006. By either December 15, 2006 or January 8, 2007, she had

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[6] All New Jersey attorneys are obligated to notify the OAE "of any change in the home and primary bona fide law office address[] . . . either prior to such change or within thirty days thereafter." R. 1:20-1(c).

recovered from her lupus attack, returned to the office, and was feeling better.

Undoubtedly, respondent experienced considerable loss when her husband died suddenly. Without doubt, respondent suffers from a serious medical condition that causes her to suffer substantially at times. Nevertheless, the complaint was served in March 2007. Through July 2007, respondent ignored all of the DEC's efforts to gain her compliance.

Respondent's claim that she provided the DEC with physicians' notes about her medical status does not explain her failure to answer the complaint. According to respondent's certification, these notes pertained to the time when she was supposed to be cooperating with the DEC's investigation. Yet, the complaint was served months later. Moreover, she did not attach a copy of these medical notes to her certification.

With respect to respondent's lupus attack, we recall that, as with her office address, she raised her health as a factor in support of her excusable neglect claim in the previous default matter. We rejected it there because, in that matter, respondent claimed to be undergoing treatment for lupus during the investigation. Yet, we observed, while the medical

treatment might have explained her failure to cooperate with the investigation, it did not explain her failure to answer the formal ethics complaint, once the investigation had concluded, as she was no longer being treated for the condition. The same holds true here.

Respondent returned to work in mid-December 2006. She was feeling better in January 2007. She made no claim that she continued to be treated for lupus or any other physical or mental condition. Thus, she has not offered a satisfactory health-related explanation for her failure to file an answer to the complaint between March and June 2007, either as a result of her husband's death or her lupus attack.

To conclude, despite the tragedies that have befallen respondent, she has failed to demonstrate that they affected her ability to file an answer the complaint. She has failed to offer any medical evidence that either her physical or mental condition precluded her from promptly attending to this matter. Moreover, her claim that she did not receive the complaint and the follow-up letters because they had been sent to the wrong address is as suspect now as it was last year.

In short, respondent did not establish that her failure to file an answer to the complaint was the result of excusable neglect. Accordingly, we denied her motion to vacate the default.

We now turn to the merits of the allegations in the complaint.

Following a review of the record, we find that the facts recited in the complaint support the charges of unethical conduct. Because of respondent's failure to file an answer, the allegations of the complaint are deemed admitted. R. 1:20-4(f). Nevertheless, while some of the allegations in the first count of the complaint support a finding that respondent engaged in unethical conduct, the factual assertions underlying the second count do not.

We discuss the second count first. Here, the complaint alleged that respondent charged an excessive fee because she required Blackman to pay her a non-refundable retainer. Non-refundable retainers are not unethical per se, although they are subject always "to the overriding precept that any fee arrangement must be reasonable and fair to the client."

Advisory Committee on Professional Ethics Opinion 644, 126 N.J.L.J. 996 (October 11, 1990).

In this case, based on the allegations of the complaint, it is impossible to know whether respondent charged an excessive fee. RPC 1.5(a) lists a number of factors to be considered when making this determination, including the amount of the fee charged and the work performed. None of these factors is demonstrated by the allegations of the complaint. Accordingly, we dismiss the RPC 1.5(a) charge.

We also dismiss the remaining charges in the second count: gross neglect (RPC 1.1(a)), failure to consult with the client and, following the consultation, to abide by the client's decisions (RPC 1.2(a)), lack of diligence (RPC 1.3), failure to defend a criminal proceeding so as to require every element of the case to be established (RPC 3.1), and failure to expedite litigation (RPC 3.2).

Specifically, the complaint did not state whether respondent failed to file motions for a Wade hearing or for a speedy trial in one or both cases. There was no allegation that the motions were necessary. Although we may presume that the

motions were not filed, that alone does not mean that they should have been filed.

With respect to one of the two cases, the second count stated only that respondent did nothing to prepare Blackman's defense, did not take his statement, and did not "get information from his witnesses." These allegations are insufficient to establish any deficiency in respondent's representation of Blackman.

First, the complaint did not identify what respondent should have done but failed to do, except the absence of a statement or information from witnesses. Second, the complaint did not describe the relevance of the statement or the witnesses' information. Third, the complaint did not establish a nexus between Blackman's purported defense and the statement and information that respondent failed to obtain from Blackman and the unidentified witnesses. In short, there is nothing within the four corners of the complaint to establish that respondent acted unethically in her representation of Blackman in that case.

For the same reasons, the allegations with respect to the other criminal case also fail to support a finding of unethical

conduct on respondent's part. First, the complaint alleged that respondent refused to honor Blackman's request that she hire a private investigator to interview exculpatory witnesses on his behalf. However, the complaint did not describe what information these unidentified exculpatory witnesses would have provided. The complaint suggested that respondent should have done so because "one of the witnesses" had recanted a prior statement given to the police. When read literally, the complaint alleged that respondent should have hired a private investigator to interview an exculpatory witness who had recanted a statement given to the police. This certainly would not have benefited Blackman. Assuming, however, that the complaint was speaking of a witness who had recanted a statement that implicated Blackman in the crime, this fact standing alone is not enough to find that respondent conducted herself improperly. The circumstances surrounding the purported recantation could have been such that the change in story was irrelevant to Blackman's defense or that it was so unreliable on its face as to be unworthy of any investigation. In short, these minimal allegations do not sustain a finding, by clear and

convincing evidence, that respondent ineffectively represented respondent, let alone unethically.

We conclude, thus, that none of the allegations of the second count of the complaint, even when assumed to have been admitted by respondent, support the violations charged. We, therefore, determine to dismiss that count.

With respect to the first count, the facts alleged in the complaint, and already recited in detail in this decision, fully support a finding that respondent failed to cooperate with the DEC's investigation of the grievance, a violation of RPC 8.1(b).

On the other hand, the complaint does not specify the false statement of material fact that respondent allegedly made to the DEC. Therefore, we cannot make the determination that respondent lied to anyone in connection with this disciplinary proceeding. To be sure, respondent made certain representations to Pinto that never materialized. However, the bare allegations of the complaint do not establish that respondent had no intention of following through with her statements at the time she made them. Therefore, we dismiss the RPC 8.1(a) charge.

In sum, we find only that respondent failed to cooperate with the DEC's investigation of this matter. We dismiss all other charges.

There remains the quantum of discipline to be imposed upon respondent for her violation of RPC 8.1(b). RPC 8.1(b) provides that a lawyer "in connection with a disciplinary matter," shall not "knowingly fail to respond to a lawful demand for information from . . . [a] disciplinary authority."

Admonitions are typically imposed for failure to comply with a committee's request for information about a grievance. In the Matter of Kevin R. Shannon, DRB 04-512 (June 22, 2004) (attorney did not promptly reply to the DEC investigator's requests for information about the grievance); In the Matter of Keith O. D. Moses, DRB 02-248 (October 23, 2002) (attorney failed to reply to DEC's requests for information about two grievances); In the Matter of Jon Steiger, DRB 02-199 (July 22, 2002) (attorney failed 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) (attorney 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) (attorney failed 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) (attorney failed to reply to the ethics investigator's requests for information about the grievance).

However, a reprimand generally issues if the attorney has an ethics history or has defaulted. In re Pierce, 181 N.J. 294 (2004) (ethics history included one reprimand for misconduct in three cases); In re Wood, 175 N.J. 586 (2005) (ethics history included an admonition for failure to cooperate with disciplinary authorities); and In re Medinets, 154 N.J. 255 (1998) (despite lack of ethics history, reprimand ordered where the attorney had defaulted).

In this case, given respondent's disciplinary history, a reprimand would be the minimum measure of discipline for her failure to cooperate with the DEC. However, respondent also has defaulted in this matter.

In a default matter, the discipline is enhanced to reflect a respondent's failure to cooperate with disciplinary authorities as an aggravating factor. In re Nemshick, 180 N.J. 304 (2004) (conduct meriting reprimand enhanced to three-month

suspension due to default; no ethics history). Accordingly, we determine to impose a censure for respondent's violation of RPC 8.1(b).

Member Lolla did not participate.

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: Isabel Frank
for Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Avis Cole Williams
Docket No. DRB 07-251

Decided: December 18, 2007

Disposition: Censure

Members	Suspension	Censure	Reprimand	Disqualified	Did not participate
O'Shaughnessy		X			
Pashman		X			
Baugh		X			
Boylan		X			
Frost		X			
Lolla					X
Neuwirth		X			
Stanton		X			
Wissinger		X			
Total:		8			1

Julianne K. DeCore
Chief Counsel