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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-051
District Docket No. I-04-011E

IN THE MATTER OF :
AVIS COLE WILLIAMS :
AN ATTORNEY AT LAW :
:

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

Decided: May 25, 2006

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 I Ethics Committee (DEC) pursuant to R.
1:20-4(f).

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, for failure to satisfy an award of the District I Fee

Arbitration Committee and pay 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 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 had paid the awards and sanctions in full.

On January 20, 2006, in a third failure-to-comply-with-fee-award matter, the Supreme Court ordered respondent's temporary suspension, effective February 23, 2006, unless, by that date, she complied with the award and paid a \$500 sanction. In re Williams, Docket No. D87SEP05 (January 20, 2006). On February 22, 2006, respondent appeared at the Office of Board Counsel and paid the sanction. At that time, she stated that she was scheduled to meet with her client the next day and pay the \$4200 award.

When respondent paid the sanction, Office of Board Counsel informed her that a default had been entered in this matter. Respondent claimed not to have received a copy of the complaint and asked for a copy of the file, which she received. She was

advised to file a motion to vacate the default by March 10, 2006, which she did.

According to the certified record, on June 14, 2005, the DEC transmitted a copy of the complaint to respondent via regular and certified mail, return receipt requested. The complaint was sent to seven different addresses, including 1442 New Road, Northfield, New Jersey 08225 (Northfield address) and 2 Croyden Road, Mays Landing, New Jersey 08330 (Mays Landing address). According to the certification of the record, respondent resided at the Mays Landing address, which the DEC secretary had obtained from the New Jersey Lawyers' Fund for Client Protection. The DEC secretary further certified that the Clerk of the Superior Court also stated that respondent "had been served with various summons [sic] and complaints at that address and, in fact, that was her home address."

All of the letters sent to respondent via certified mail were returned unclaimed. The letters sent to respondent via regular mail, including those mailed to the Northfield and Mays Landing addresses, were not returned.

On September 6, 2005, the DEC sent a letter to respondent at the same seven addresses, via regular and certified mail, return receipt requested. 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. All of the letters sent via certified mail were returned unclaimed. The letters sent to respondent via regular mail, including those mailed to the Northfield and Mays Landing addresses, were not returned.

As of February 13, 2006, respondent had not filed an answer to the complaint. Accordingly, on that date, the DEC certified this matter to us as a default.

We first consider respondent's motion to vacate the default. To vacate a default, a respondent must (1) offer a reasonable explanation for the failure to answer the ethics complaint and (2) assert a meritorious defense to the underlying charges. In this case, respondent's certification is vague and difficult to follow at times. Nevertheless, while her assertions prove that she must have received the ethics complaint, there is no reasonable explanation as to why she did not file an answer.

Of her many examples of "excusable neglect," the most pertinent is respondent's claim that she has not received any certified mail, or any other form of delivery, from the DEC since her last "correspondence" with the DEC investigator, at

which time, respondent claims, she told the investigator that "the best contact number and address would be my home as I had limited mobility at that time." Respondent does not identify the date of this last "correspondence." Accordingly, we briefly review the investigation.

The grievance was dated March 30, 2004. According to the investigator's report, which is a part of the certified record, the DEC sent the grievance to respondent on April 16, 2004, followed by another letter on June 4, 2004. She did not respond until June 28, 2004. At that time, she stated that she had not received the prior correspondence, but nevertheless provided some materials, and requested another week within which to fully respond. When the DEC failed to receive anything further from respondent, it began a formal investigation on July 26, 2004.

Throughout the investigation, respondent claimed non-receipt, or delay in delivery, of DEC mailings. Except for the June 28, 2004 letter, respondent sent only one other communication to the investigator, which was a copy of materials and correspondence with respect to her representation of the grievant. The postmark on the envelope was December 11, 2004. She also told the investigator that she sent him a letter and a written response to the grievance on July 21, 2004, but he

denied having received it. The only other communication between respondent and the DEC was a January 17, 2005 telephone conversation between her and the investigator.

Based on these facts, respondent's last "correspondence" with the investigator had to have been sometime between June 28, 2004 and January 17, 2005. Thus, sometime within that window, she informed him of her home address. The complaint was mailed in June 2005. According to the certification in support of her motion to vacate the default, respondent's home address did not change until January 11, 2006. Respondent offers no explanation as to why she would not have received the complaint, which was mailed to an address that she (1) gave to the investigator in 2004 or 2005 and (2) did not change until January 2006.

With respect to the Northfield address, respondent makes an attempt to explain why she may not have received the complaint that was mailed to her at this address by pointing out the following: (1) three separate offices are located at that address, (2) she does not have office staff, (3) the postal worker leaves notices for her when she is required to sign for a letter, and (4) "an elderly woman" who works in one of the offices sometimes signs for the mail and gives it to respondent.

The information provided by respondent in her certification establishes that she must have received the ethics complaint at either her home or business address or both. First, respondent certified that she told the DEC investigator, sometime between July 2004 and January 2005, that the best way to contact her was either at her home phone number or her home address. Second, she states that her home address "did not change until January 11, 2006." Accordingly, the Mays Landing address must have been her home address at the time the complaint was mailed to her in June 2005. Because the regular mail was not returned to the DEC, service is presumed. Respondent has not rebutted that presumption, or offered any basis upon which service can be doubted.

In addition, the Northfield office address was accurate. Respondent's certification, which is dated March 9, 2006, states that she has maintained an office at that address "for over (1) year." Thus, she has been at that address since at least March 2005. The complaint was mailed to that address in June 2005. The letters were not returned, and, therefore, service is presumed. Although respondent offers a number of reasons why she may not have received mail that was delivered to this office address, she offers no explanation for her apparent non-receipt

of mail at her home address. Thus, even assuming non-receipt at the Northfield address, respondent did receive the complaint at her home.

Notwithstanding respondent's claim that she never received the complaint, she offers a number of reasons for her "excusable neglect" in failing to file an answer. None of them are convincing. First, respondent's claim that she believed her written response to the grievance actually constituted an answer to the formal ethics complaint simply makes no sense, as the complaint had not even been filed at that time. Second, although respondent was undergoing medical treatment for lupus during the investigation, the complaint was not served until well after the investigation had effectively concluded. Thus, while respondent's condition may explain her failure to be more responsive during the investigation, it does not explain her failure to answer the formal ethics complaint once the investigation had concluded.

Third, respondent's assertion that, in June 2005, an OAE attorney informed her that the matter would be transferred to another DEC due to a conflict with one of the DEC members and, therefore, respondent was no longer "looking for any mail 'from Ethics,'" simply does not support the conclusion that she did

not receive the complaint. Of course, respondent would continue to receive mail, albeit from a different committee. Moreover, despite respondent's claim that the OAE attorney told her that the matter would be transferred, it was not. This case has always been assigned to the District I ethics committee.

Fourth, although respondent claims that, by the time the complaint had been served, Woodson had "made it clear through his conversations with his sixteen year old son and [her] only nephew that 'he was not pursuing the matter,'" this was insufficient to justify her failure to file an answer. Although respondent "heard" that Woodson had dropped his claim against her, she did not hear that from Woodson or from the DEC. Rather, respondent heard it from Woodson's son. Notwithstanding the fact that a grievant cannot halt an ethics investigation, it was not reasonable for respondent to rely upon this "hearsay" and then ignore the DEC.

In short, respondent offered us no basis upon which to conclude that she did not receive the formal ethics complaint or that her failure to file an answer to the ethics complaint was the result of excusable neglect. Rather than establish that she did not receive the mail that was sent to her home, respondent established the contrary. Moreover, her additional reasons for

not filing an answer contradict her assertion that she never received it in the first place.

Respondent also has failed to satisfy the meritorious-defense prong of the test for vacating a default. First, she attached no proposed form of verified answer to the motion to vacate. Therefore, there is no paragraph-by-paragraph response to the allegations of the complaint, let alone a denial of the charged violations. Second, respondent's certification says little in her defense. In fact, respondent all but concedes her misconduct.

With respect to the merits of the complaint, respondent asserts: "I have read it many times and have felt somewhat remorseful." She then details what was essentially a feud between her and Woodson as the result of the death of Woodson's brother, who also was respondent's "dear friend." According to respondent, due to her anger with Woodson, she should have removed herself as his attorney of record sooner. Moreover, she admits that, due to the feud, she referred Woodson's "matter" to another attorney, Christopher Robertson. However, once she and Robertson no longer shared office space, respondent was "not clear" about what Robertson and Woodson had done about the matter.

In the end, respondent states that she does not believe that her actions "constituted gross misconduct," although she recognizes that she had handled the matter differently from any other matter during her twenty-year career. She is "not pleased" with this admission because she believes "that representation of a family member should in no way be any less than the Canons of Ethics [s]tipulate." Respondent concludes: "I did not intentionally do anything wrong, however, I do believe that emotions were out of order in the situation."

In sum, we conclude that not only was respondent served with the complaint when the DEC mailed it to her, but her explanations were of no merit. Accordingly, we determine to deny respondent's motion to vacate the default.

The three-count complaint charged that respondent had committed some or all of the following ethics violations in connection with her representation of her former brother-in-law, Dr. Kevin R. Woodson, with respect to two lawsuits and an insurance claim resulting from water damage to the building where Woodson leased space for his medical office: RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect), former RPC 1.4(a) (failure to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests

for information), and former RPC 1.4(b) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation).

The 1200 Clinton Avenue Associates Matter (Count One)

On July 31, 2002, Woodson's rented medical office sustained some unspecified "water damage." On August 9, 2002, respondent agreed to represent Woodson, "at least to some extent," in connection with two lawsuits and an insurance claim that resulted from this incident.

At some unidentified time, the building's owner, 1200 Clinton Avenue Associates (the landlord), filed suit against Woodson, seeking damages for his alleged breach of the lease. Apparently, Woodson did not file an answer, causing a default to be entered against him.

On May 28, 2003, respondent filed "opposition" to the entry of default on Woodson's behalf. In her supporting certification, respondent stated that the complaint had not been properly served upon Woodson. Respondent also certified that, since July 2, 2002, she had been Woodson's attorney with respect to "any and all matters dealing with" the landlord.

The landlord's attorney documented that Woodson had been served properly, but nevertheless agreed to extend the time for the filing of an answer. When an answer was not filed, on July 8, 2003, the court entered a default judgment against Woodson.

The ethics complaint alleged that "[r]espondent did not provide to . . . Woodson an appropriate explanation of the entry of the default, nor the impending entry of a default judgment." It charged that respondent did not inform Woodson of the landlord's attorney's offer to extend the time to file an answer, or the possibility of filing a motion to vacate the default, or "simply the importance of seeking other representation regarding this matter."

Apparently, respondent claimed that "her representation of . . . Woodson with respect to this particular matter was intended to be limited to the filing of the certification and that . . . Woodson intended to directly negotiate the resolution of the claim." However, according to the complaint, even if that were true, "respondent was grossly negligent in dealing with the termination of her representation." Moreover, she "failed to keep her client reasonably informed about the status of this matter and failed to explain the matter to the extent

reasonably necessary to permit her client to make informed decisions regarding the representation."

According to the complaint, respondent's conduct violated RPC 1.1, presumably (a), and RPC 1.4, presumably (a) and (b).

The Insurance Claim (Count Two)

The complaint alleged that Woodson had filed a claim with State Farm Insurance Company as a result of the damage to his medical office. State Farm requested documentation from respondent on two occasions, but none was provided. On May 20, 2003, State Farm denied coverage. The complaint asserts: "If the failure to respond to State Farm was not within the control of respondent, it was incumbent upon her to document to her client such inability to respond and to clearly explain the potentially adverse repercussions. Respondent's file indicates no such explanation."

Notwithstanding these factual assertions, count two of the complaint did not charge respondent with any ethics violations.

The Caller Matter (Count Three)

According to the complaint, on January 14, 2003, respondent filed a complaint in the Superior Court of New Jersey, Law

Division, Essex County, against "various defendants," who the lawsuit claimed were responsible for the damage to defendant's office. The complaint was refiled in February and March 2003 "to properly comply with the Superior Court filing requirements."

On October 22, 2003, respondent and attorney Christopher D. Robertson executed a substitution of attorney. Prior to that time, however, her file did "not reflect any significant successful activity with respect to the progress of this suit."

Woodson was never advised of Robertson's representation. Shortly after Robertson's unsuccessful attempts at serving defendants with process, he stopped working on the case and returned the file to respondent. After no further action was taken, and the case was dismissed for failure to prosecute.

According to the complaint:

Respondent's failure to diligently pursue this litigation during her period of representation of Dr. Woodson, as well as her failure to end her representation with appropriately documented notification to her client of the status of this litigation and the requirements to pursue it, evidence neglect and a failure to keep her client adequately informed.

[Complaint, Count Three, ¶24.]

Count three of the complaint did not charge respondent with any ethics violations relating specifically to its factual allegations. Instead, the complaint charged: "Respondent's conduct with respect to the handling of . . . Woodson's insurance claim and the handling of Woodson v. Caller, when combined with the acts of neglect with respect to the 1200 Clinton Avenue Associates matter, demonstrates a pattern of neglect in violation of RPC 1.1 and failure to communicate in violation of RPC 1.4."

Service of process was properly made when the DEC mailed the complaint to the Northfield and Mays Landing addresses on June 14, 2005. Inasmuch as respondent failed to file a verified answer to the complaint within the time prescribed, the allegations are deemed admitted. R. 1:20-4(f). Moreover, the allegations in the complaint support a finding that respondent engaged in unethical conduct.

Respondent engaged in gross neglect when she failed to file either a motion to vacate the default or an answer on Woodson's behalf, resulting in the entry of a default judgment against him, and then failed to take steps to vacate the default judgment. In addition, respondent failed to keep Woodson reasonably informed about the status of the matter (a violation

of RPC 1.4(a)), and failed to explain the matter to the extent reasonably necessary to permit him to make informed decisions regarding the representation (a violation of RPC 1.4(b)). Respondent did not explain to Woodson the consequences of a default or the options available for vacating it. Respondent also failed to inform Woodson of the extension of time within which to answer. She did not determine from him whether he wanted to move to vacate the default or file an answer pursuant to the extension.

Respondent also failed to inform Woodson that she did not file either an answer pursuant to the extension or a motion to vacate the default. She did not explain to him the effect of the entry of a default judgment or the possibility of vacating it. According to a letter in the package from the DEC, the amount of the default judgment, plus costs, was \$27,640.50.

We find, thus, that respondent violated RPC 1.1(a) and RPC 1.4(a) and (b) in her handling of the 1200 Clinton Avenue matter.

With respect to the insurance claim, this particular count does not identify any ethics rules that respondent allegedly violated. Nevertheless, the ethics violations charged in Count

Three, particularly the violation of RPC 1.4(a), incorporate this client matter.

The complaint describes respondent's failure to comply with State Farm's request for documentation and states that the claim was denied. The complaint does not identify the ground for the denial of the claim, which could have been the result of the claimant's failure to cooperate in the investigation, or simply because the event was not covered by the policy's terms. Although the denial letter in the file suggests that the reason for the denial was the failure to cooperate, only the first page of the letter is included.

Notwithstanding the reason(s) for the claim's denial, the allegations of the complaint simply cannot sustain a finding that respondent engaged in unethical conduct. The complaint alleges that respondent was required to take certain steps to protect her client if her failure to respond to State Farm's requests was not within her control. If the failure to respond was within respondent's control, then her failure to do so would be gross neglect, a violation of RPC 1.1(a). However, the complaint does not state that the failure to respond was within her control. It merely states the hypothetical. Similarly, if respondent's failure to respond was due to Woodson's failure to

supply her with the required information, then she should have explained to Woodson the ramifications of his non-cooperation. Her failure to do so would have been a violation of RPC 1.4(a). Yet, in the absence of knowing whether the provision of documents was or was not within respondent's control, we cannot determine whether she violated RPC 1.1(a) or RPC 1.4(a).

Thus, we determine to dismiss count two of the complaint.

As to count three, respondent improperly executed a substitution of attorney with Robertson because she had not discussed the matter with Woodson first. In doing so, she violated RPC 1.4(a). Similarly, her conduct in turning over the matter to Robertson violated RPC 1.16(d) because, in doing so, respondent terminated her representation of Woodson, but failed to provide him with any notice. Although the complaint did not charge respondent with having violated RPC 1.16(d), the facts alleged gave her sufficient notice of the allegedly improper conduct and the potential finding of a violation of that rule.

Finally, we conclude that respondent engaged in gross neglect when, after having filed the complaint in March 2003, she still had not taken any steps to serve it by the end of October 2003, which ultimately resulted in the dismissal of the complaint for failure to prosecute. Although the complaint did

not charge respondent with having violated RPC 1.1(a), the facts alleged gave her sufficient notice of the allegedly improper conduct and the potential finding of a violation of that rule.

Thus, respondent violated RPC 1.4(a), as well as RPC 1.1(a) and RPC 1.16(d).

On the other hand, the complaint does not allege sufficient facts to sustain the conclusion that respondent engaged in a pattern of neglect. A pattern of neglect requires three acts of neglect. In re McClure, 180 N.J. 154 (2004); In re Nielsen, 180 N.J. 301 (2004). In this case, while respondent clearly engaged in neglect in the 1200 Clinton Avenue Associates and the Caller matters, the complaint fails to sustain a finding that she committed neglect in the Insurance Claim matter. Thus, the RPC 1.1(b) claim must be dismissed.

To conclude, respondent violated RPC 1.1(a), RPC 1.4(a), RPC 1.4(b), and RPC 1.16(d).

There remains the quantum of discipline to be imposed for respondent's violations of RPC 1.1(a), RPC 1.16(d), and RPC 1.4(a) and (b). Conduct involving gross neglect, lack of diligence, and failure to communicate with the client ordinarily results in either an admonition or a reprimand, depending on the gravity of the offense, the harm to the client, and the

attorney's disciplinary history. See, e.g., In the Matter of Joseph Jay Lowenstein, Docket No. 06-016 (DRB February 23, 2006) (admonition for gross neglect, pattern of neglect, lack of diligence, and failure to communicate with client in three matters; in one matter, the attorney failed to properly serve the complaint, which was dismissed for lack of prosecution and not restored, and failed to keep the client apprised of the status of the case; in the second matter, due to a breakdown in communication with his client, the attorney failed to restore to the trial calendar a complaint that had been dismissed due to a clerical error; in the third matter, the attorney permitted complaint to be dismissed twice for lack of prosecution and failed to keep his client informed; mitigating factors included the attorney's unblemished twenty-year career, his medical condition, and his cooperation with ethics authorities); In the Matter of Thomas M. Keeley-Cain, Docket No. 05-099 (DRB May 26, 2005) (admonition for gross neglect, lack of diligence, and failure to communicate with client for attorney who failed to give one client notice that its answer was subject to dismissal, allowed the answer to be dismissed for failure to answer interrogatories, failed to give notice to two other clients in the same matter that he had failed to file an answer, which

resulted in the entry of default, and then failed to inform clients that he had failed to file an answer and that a default judgment would be entered against them; mitigating factors included the attorney's unblemished disciplinary history, his remorse, his acceptance of full responsibility, the lack of personal gain, and the fact that this was an isolated incident); In the Matter of Anthony R. Atwell, Docket No. DRB 05-023 (February 22, 2005) (admonition for attorney who did not disclose to the client that the file had been lost, canceled several appointments with the client for allegedly being unavailable or in court when, in fact, the reason for the cancellations was his inability to find the file, and then took more than two years to attempt to reconstruct the lost file; violations of RPC 1.4(a) and RPC 1.3 found); In the Matter of Ben Zander, DRB 04-133 (May 24, 2004) (admonition for attorney whose inaction caused a trademark application to be deemed abandoned on two occasions; the attorney also failed to comply with the client's requests for information about the case; violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(a)); In the Matter of Vincenza Leonelli-Spina, DRB 02-433 (February 14, 2003) (admonition for gross neglect, lack of diligence, and failure to communicate with the client); In the Matter of Jeri

L. Sayer, DRB 99-238 (January 11, 2001) (admonition for attorney who displayed gross neglect, lack of diligence, and failure to communicate with the client; a workers' compensation claim was dismissed twice because of the attorney's failure to appear in court; thereafter, the attorney filed an appeal, which was dismissed for her failure to timely file a brief); In the Matter of Jonathan H. Lesnik, DRB 02-120 (May 22, 2000) (admonition for failure to file an answer in a divorce matter, resulting in a final judgment of default against the client; the attorney also failed to keep the client informed about the status of the case); In the Matter of Paul Paskey, DRB 98-244 (October 23, 1998) (admonition for attorney who engaged in gross neglect, lack of diligence, and failed to communicate with the client); In the Matter of Ben Payton, DRB 97-247 (October 27, 1997) (admonition for attorney who engaged in gross neglect, lack of diligence, and failure to communicate with the client; the attorney filed a complaint four days after the expiration of the statute of limitations, and then allowed it to be dismissed for lack of prosecution; he never informed the client of the dismissal; he also failed to reply to the client's numerous requests for information about the case); In re Aranguren, 172 N.J. 236 (2002) (reprimand for attorney who failed to act with

diligence in a bankruptcy matter, failed to communicate with the client, and failed to memorialize the basis of the fee; prior admonition and six-month suspension); In re Zeitler, 165 N.J. 503 (2000) (reprimand for attorney who engaged in lack of diligence and failed to communicate with clients; extensive ethics history); In re Gordon, 139 N.J. 606 (1995) (reprimand for lack of diligence and failure to communicate with the clients in two matters; in one of the matters, the attorney also failed to return the file to the client; prior reprimand); and In re Wildstein, 138 N.J. 48 (1994) (reprimand for misconduct in three matters, including gross neglect, lack of diligence, and failure to communicate with clients).

Under ordinary circumstances, respondent would be admonished. However, she has defaulted in this case. 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 upgraded to three-month suspension due to default; no ethics history). Therefore, a reprimand is warranted in this case.

For respondent's violations of RPC 1.1(b), RPC 1.4(a), RPC 1.4(b), and RPC 1.16(d), we determine to impose a reprimand.

Vice-Chair Pashman did not participate.

We further require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

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 Avis Cole Williams
Docket No. DRB 06-051

Decided: 5/25/06

Disposition: Reprimand

Members	Suspension	Reprimand	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:		8			1


Julianne K. DeCore
Chief Counsel