SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 00-330 and
Docket No. DRB 00-331

IN THE MATTER OF

S. DORELL KING AND

DAVID BRANTLEY

ATTORNEYS AT LAW

Decision

Argued: December 21, 2000*

Decided: August 22, 2001

Mitchell E. Ostrer appeared on behalf of the District VB Ethics Committee.

Respondents did not appear, despite proper notice.

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

These matters were before us based upon two recommendations for discipline filed by the District VB Ethics Committee (DEC).

Respondents are husband and wife. Respondent King was admitted to the New Jersey bar in 1980. At the time of the DEC hearings, she maintained a law office at Suite 100, 13 Rockland Terrace, Verona, Essex County.

** But carried for deliberation to March 15, 2001.*

Respondent Brantley was admitted to the New Jersey bar in 1970. He maintains a law office at Suite 200, 13 Rockland Terrace, Verona, Essex County.

Since June 16, 1998 King has been under a temporary suspension for failure to comply with a Supreme Court Order directing her to return a $7,500 unearned retainer to a client. In addition, she has been the subject of discipline twice. On February 3, 1998 she was reprimanded for gross neglect, pattern of neglect, lack of diligence and failure to communicate with clients in three matters, failure to release the file to the client and failure to return an unearned fee in the amount of $7,500 in one of the matters. On March 9, 1999 she was suspended for three months for gross neglect, pattern of neglect, lack of diligence, failure to communicate with the client and failure to cooperate with disciplinary authorities. That matter proceeded on a default basis. The suspension will start running when King complies with the Court's order to return the unearned retainer and the temporary suspension is lifted.

Brantley has had six prior encounters with the disciplinary system. On March 29, 1982 he was privately reprimanded for failure to represent a client zealously. On February 29, 1988 he was again privately reprimanded for driving with a suspended license and failing to pay the fines associated with these violations. On May 25, 1988 he received his third private reprimand for grossly neglecting a personal injury matter. Five years later, on April 15, 1991, he was suspended for one year for misconduct in four matters, including gross neglect, pattern of neglect, lack of diligence, failure to

communicate, misrepresentation of the status of the case to a client and failure to cooperate with disciplinary authorities. He was suspended again on May 1, 1995, this time for three months, for gross neglect in two matters and failure to cooperate with disciplinary authorities in three matters. Lastly, on April 23, 1999 he was reprimanded for lack of diligence in the handling of an estate matter.

* * *

This matter was originally before us in September 1998, but was remanded on procedural grounds, as discussed below.

The DEC first scheduled the hearings in this matter in early 1997. Due to several adjournment requests by respondents, the hearing was postponed until August 11, 1997, when both respondents appeared. Brantley had to leave the hearing early that day to resolve an alleged automobile problem. The hearing was adjourned in the midst of the cross-examination of a witness, Floria Mae Butts-Noel, and rescheduled for September 17, 1997. On the return date, with the panel present, Butts-Noel ready to testify and a court reporter in place, Brantley called and requested an adjournment of the hearing alleging that King was sick. The panel chair required documentary proof of the alleged medical problem, as a condition to postponing the hearing. Although that proof was not

timely submitted, the panel chair nonetheless rescheduled the hearing for November 4, 1997.

On or about October 29, 1997 it became apparent that Butts-Noel would be unavailable on November 4, 1997. Therefore, on October 29, 1997, the panel chair sent a letter to the presenter, with copies to respondents and the other two panel members, stating as follows, in part:

> We received a telephone call from your office indicating that the proposed date of the continued hearing in this matter, previously set for November 4, 1997, is not acceptable for the grievant. Kindly immediately provide two or three alternative dates, in the month of November, when the grievant may be available so I may proceed to schedule this matter and attempt to bring it to conclusion without further delay.[1]

After receiving this letter, the presenter called the panel chair, stating that he had made a mistake and that Butts-Noel was available for that date. With time short, the panel chair's secretary tried to reach respondents by telephone to advise them that the October 29, 1997 letter should be ignored and that the hearing would proceed on November 4, 1997, as previously scheduled. The secretary reached answering machines

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[1] At oral argument before us, the presenter made a motion to supplement the record to include a series of letters from the DEC to respondents that, although marked for identification at the DEC hearing, inadvertently were not entered into evidence. We later granted that motion. Among the letters is the presenter's October 29, 1997 correspondence.

for each respondent and left a message confirming that the hearing would take place on November 4, 1997. According to the presenter's brief to us,

> Brantley and King ignored the messages. Instead, on Sunday November 2, 1997, presumably sitting in her office near her answering machine, King composed a response to the October 29, 1997 letter. Construing the October 29 letter as an adjournment of the hearing, King advised the panel chair of dates that would be inconvenient for her. Brantley drafted a similar letter dated November 3, 1997. On November 3, 1997, the same day Brantley was apparently in his office drafting a response to the October 29, 1997 letter, [the panel chair's secretary] again called King's and Brantley's offices; again, no live person answered the telephone; and again, she left separate messages on the two answering machines, to reiterate that the hearing would proceed the next day, and would begin an hour early, at 9:00 a.m. instead of 10:00 a.m.

Respondents did not appear at the November 4, 1997 DEC hearing.

At the DEC hearing, the panel chair, too, expressed his frustration with respondents' lack of cooperation. He stated that, in or about late April 1997, the presenter had held a pre-hearing conference with respondents regarding the upcoming hearing in these matters. Both respondents had objected to a DEC hearing because they had allegedly petitioned the Supreme Court to overturn our earlier decision to remand these matters for a hearing. The panel chair stated as follows:

> In about the middle of June [1997] there was another telephone communication with Ms. King and Mr. Brantley. And essentially, I was concerned because they had represented to me back sometime in April of 1997, that they would be in fact filing an application with the Disciplinary

Review Board to essentially preclude this hearing from taking place. And that had not occurred.

And on June 12, 1997, I sent another letter to all parties indicating that I was concerned that the application had not been made. And I wanted to proceed ahead with the hearing. I mentioned a phone call, because there was a response. And Ms. King and Mr. Brantley at that time requested more time to, in fact, file an application with the Disciplinary Review Board. Apparently, they claimed they had some sort of problems with their scheduling. They wanted to put off the June 25 hearing.

As a courtesy to the respondents, I essentially agreed to put off the hearing again to give them more time to file the motion. And they claimed that the motion had to be in the exact timing [sic]. I don't recall as I sit here now, but apparently the Board was meeting sometime either [sic] mid-July and then, again, in mid-August [sic]. The papers had to be filed by the end of July. And for these reasons the hearing was continually put off again as a courtesy to the respondents to have this motion filed. It was never, in fact, filed and to my knowledge it has not been filed and despite making numerous requests upon this panel to delay the hearing, delay the hearing, [sic] which we did on their behalf, the motion was not filed.

And I say that at this point because again, as a chairperson, I have already expressed my displeasure on the record, that I feel we have been somewhat used, in the sense that because we're courteous, and because we gave Mr. Brantley and Ms. King every opportunity to basically file whatever papers they needed to protect themselves, they never did so. They took advantage of our courtesies in this regard.

I think I would also like to mark for identification my letter of October 8, 1997 which scheduled this hearing for November 4, 1997.

The panel chair then called his personal secretary, who testified under oath by telephone that she had attempted to confirm with respondents, by calling their offices, the scheduled hearing date of November 4, 1997. She testified that she had left messages, on each respondent's answering machine, that the hearing would take place on November 4, 1997 and that the October 29, 1997 letter should be disregarded. Satisfied that respondents were on notice of the hearing date, the panel chair proceeded with the hearing, at which time several witnesses testified.

At the September 1998 oral argument before us, respondents argued that the notice of the change in the hearing date had been insufficient because they had not received the messages left on their answering machines. In order to afford respondents full due process, in September 1998 we remanded the matter to the DEC to give respondents an opportunity to cross-examine Butts-Noel and her attorney, J. Clifton Wilkerson.

Pursuant to the remand, the DEC hearings resumed on December 14, 1998 and continued on five separate hearing days over the next fourteen months. More than one thousand pages of transcript were generated, much of it wasteful argument by respondents on tangential or wholly irrelevant issues. Indeed, the hearing panel report detailed respondents' attempts to obfuscate the issues and needlessly prolong the hearings. Very little new information was obtained from the cross-examination of the witnesses.

On June 21, 1999, the final day of hearings, Brantley introduced a series of previously undisclosed documents, comprising a portion of the original Butts-Noel file, which had turned up days earlier in a search of a "storage bin" containing his old office files. Brantley did not explain why he had not searched that location prior to the last day of hearings in a matter that required the production and submission of those documents years earlier.

When the matter came before us again in late 2000, Brantley waived appearance and submitted a twenty-page brief. Although the deadline for the filing of the brief had been set for December 13, 2000, on the due date Brantley called the Office of Board Counsel to request an extension to file his brief by noon on the following day, which request was granted. Brantley did not hand-deliver the brief until December 18, 2000 at 5:15 p.m., after the Office of Board Counsel had closed. Because time was so short, we had no time to review Brantley's submission prior to the December 21, 2000 oral argument. Therefore, after hearing oral argument, we withheld deliberation on the matter, pending our review of Brantley's brief. We also allowed the presenter an opportunity to reply to the brief.

Brantley's brief contained attacks on the credibility of the witnesses who testified against him and questioned the integrity of the presenter, the panel and the panel chair. Deep within the brief was a request that we consider a motion brought (and denied) below, seeking the panel chair's recusal or removal from the proceedings because of an

alleged bias against "the respondents."[2] Brantley detailed some of the alleged bias, citing as its basis the fact that the same hearing panel heard the remainder of the case on remand. We denied Brantley's request in this regard.

Next, Brantley set out a number of instances that, he claims, show that the DEC ignored exculpatory evidence and testimony throughout the proceedings. It appears, however, that no evidence or testimony was ignored. Rather, it did not find its way into the hearing panel report.

Finally, Brantley urged us to grant his 1998 motion to supplement the record, which he made at oral argument before us. Procedurally, those documents were made a part of the record on remand and are, thus, in the record now before us. Therefore, that motion is now moot.

In conclusion, Brantley requested us to either dismiss the complaint in its entirety, declare the hearing a mistrial "because it did not consider all of the evidence" or disqualify "the Panel Chair and the Panel Members with a remand of this matter for a full hearing before a different panel." We denied that request.

* * *

[2]Brantley alternately referred to himself in the singular form and to "the respondents," obviously referring to S. Dorell King, the co-respondent. In several instances, Brantley even argued issues pertinent only to King's matter. There is no indication that King has authorized him to act in her behalf.

This disciplinary matter arises from both respondents' representation of a client in a matrimonial case. The complaint alleges that King violated RPC 1.16 (failure to turn over file to subsequent counsel and to return unearned retainer), RPC 1.5 (failure to utilize fee agreement and to return unearned fees), RPC 1.15 (failure to safekeep property), RPC 1.3 (lack of diligence), RPC 1.4 (a) (failure to communicate) and RPC 8.1 (b) (failure to cooperate with disciplinary authorities). As to Brantley, the complaint alleges violations of RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate), RPC 1.5 (failure to utilize retainer agreement), RPC 1.16 (d) (failure to turn over file to subsequent counsel and to return unearned retainer), RPC 3.3 (a) (making a false statement of material fact to a tribunal), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and RPC 8.1 (b) (failure to cooperate with disciplinary authorities).

The facts are as follows:

On October 11, 1991 Floria Mae Butts-Noel retained King to file a complaint for divorce. She signed a retainer agreement and paid King $250. The agreement provided for a minimum fee of $3,500, the payment of $951.40 before any work was to be performed and, in the event that King were relieved as counsel, the payment of an hourly fee of $250 for work already performed.

Butts-Noel testified at the DEC hearing of August 11, 1997. According to Butts-Noel, she initially contacted King in October 1991 about obtaining a divorce from her

husband, Johnny Noel. Butts-Noel put the matter on hold in January 1992, while she and her husband were attempting to reconcile. By June 1992, when those efforts had proved unsuccessful, Butts-Noel decided to continue with the divorce.

In June 1992, Johnny Noel filed a complaint for divorce. On July 30, 1992, Butts-Noel met with King and asked her to answer the complaint and to file a counterclaim in her behalf. According to Butts-Noel, King agreed to do so. By this time, Butts-Noel had paid King $2,100.40 in a series of installments.

Butts-Noel also testified that she was introduced to respondent Brantley at the July 30, 1992 meeting. Butts-Noel's understanding was that Brantley "would be helping [respondent King] with her case load, he was to interview me to apprize [sic] himself with what was going on, and then we went into the other room." Butts-Noel testified that she believed at all times that King was her attorney. She denied that she ever retained Brantley to represent her, noting that she had made all of her fee payments to King.[3]

On this issue, King testified on remand that she told Butts-Noel, on July 30, 1992, that Brantley would be acting as her new counsel, on the same terms contained in the retainer agreement. According to King, Butts-Noel agreed to the change in the representation. Butts-Noel, in turn, denied having such a conversation with respondent. According to Butts-Noel, although she did not know the exact nature of respondents'

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[3] Butts-Noel's checks to respondent King were entered into evidence and bear King's endorsement for deposit.

business relationship, she clearly understood that King would be representing her and that Brantley would be merely assisting King in the representation.

Butts-Noel recalled signing three blank forms at the July 30, 1992 meeting with respondents. She believed that those forms were later used on November 5, 1992, when Brantley filed an answer and counterclaim in her behalf. According to Butts-Noel, she did not sign the answer and counterclaim, although copies of these pleadings contain a signature alleged to be hers. Brantley would later testify, on remand, that no blank forms with Butts-Noel's signature already affixed were ever typed-over and filed without her approval and that any accusations by Butts-Noel in this regard were groundless. There is no other evidence in the record on this issue.

Butts-Noel also testified that, from approximately November 1992 to early January 1993, she believed that her matter was proceeding apace. She claimed that her efforts to contact respondents during that time were unsuccessful:

> I would call, leave messages, again I started going to the office, leaving notes under the door when the door man would allow me to the back end I would slip a note under the door. I would ask if they were still within the building coming and going. I asked my godmother, who referred me to her in the first place, if she knew of anything. And a couple of times, she has even gone with me to the office when I put notes under the door.

The record is silent about whether the notes were left during normal business hours. Respondents produced no evidence of communications with Butts-Noel from November 1992 through January 1993, beyond King's December 17, 1992 billing

statement to Butts-Noel, which, King alleged, should have gone out on Brantley's letterhead.

Finally, Butts-Noel testified that, from January 1993 to April 1993, she received no written correspondence from respondents about her case. She specifically denied receiving a copy of a case information statement that, Brantley alleged, had been sent to her.[4] When asked about the case information statement filed in her behalf on April 26, 1993 by Brantley, Butts-Noel denied having seen it prior to its filing. She recalled giving King, at their July 30, 1992 meeting, several original documents, including tax returns, to be used in the completion of the case information statement. Indeed, Butts-Noel testified that she was surprised when she received an April 16, 1993 letter from Brantley stating that he had left several telephone messages for her to contact his office. According to Butts-Noel, no such messages were ever left for her. The letter also stated that Brantley had previously requested, by letter dated January 21, 1993, that Butts-Noel return a completed case information statement. Butts-Noel denied ever receiving that letter. Lastly, Brantley's April 16, 1993 letter also advised Butts-Noel that the matter would be dismissed on Monday, April 26, 1993, unless her case information statement was filed with the court five days prior to that date. Butts-Noel denied any knowledge, before that letter, that her case was in jeopardy, adding that no one from either King or

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[4]Apparently, Butts-Noel gave King several addresses where she could be reached, other than the marital home address, in an effort to ensure that Johnny Noel would not intercept her mail. Butts-Noel was certain that any correspondence mailed to the several addresses provided to King would have reached her.

Brantley's office had ever sent her the case information statement form or requested a completed case information statement.

Immediately after receiving Brantley's letter, Butts-Noel called King. She recalled that King had asked her to come to the office whenever it was convenient to Butts-Noel. Butts-Noel arranged to meet King on April 24, 1993.[5] She testified that both respondents were present at the April 24, 1993 meeting.[6] She described how King sat at one end of a conference table, while Brantley sat at the other. Butts-Noel stated that, on that occasion, she had paid the $309.60 balance due on her bill, in cash, handing it directly to Brantley. According to Butts-Noel, Brantley conducted the meeting, while King merely listened. Butts-Noel testified that Brantley promised to file her case information statement with the court on April 26, 1993, in order to continue with her defense and counterclaim.

Brantley testified that, prior to his meeting with Butts-Noel, he called the judge's chambers and spoke to the judge's law clerk. According to Brantley, the clerk told him that, so long as the case information statement was filed on April 26, the matter would not be dismissed. Therefore, Brantley asserted, he operated on the assumption that the papers could be filed as late as April 26, 1993. Contrary to his understanding, however,

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[5] King admitted that she spoke to Butts-Noel about setting up a meeting, but stated that, because she was no longer Butts-Noel's attorney, the meeting was to be with Brantley.

[6] According to Butts-Noel, no one from King's office told her of the importance of meeting prior to the April 26, 1993 filing deadline. Therefore, she chose April 24 because it was a Saturday, a non-working day for her.

the court dismissed the complaint, suppressed the answer and dismissed the counterclaim on that date.

Butts-Noel called Brantley shortly after their meeting (April 27, 1993, according to Brantley) and was told that her pleadings, as well as her husband's complaint, had been dismissed. Butts-Noel testified that, at this juncture, she told Brantley to "do whatever necessary [sic] to get the divorce, whatever it would take, because I wanted a divorce." By this time Butts-Noel had paid King $3,580 in twelve installments.[7]

From April 27, 1993 until approximately October 1993 Butts-Noel heard nothing from King's office regarding her case. She testified that she called the office, left messages on King's answering machine and left notes under her office door in an effort to prompt a response. Finally, when she called King's office one day, Brantley answered the telephone. Brantley reportedly told Butts-Noel that he would be filing a motion in her behalf that month. Butts-Noel testified that, during this conversation, she became disappointed with the lack of progress with her case and decided that, if results were not obtained by November 1993, she would hire another attorney. On November 19, 1993 Butts-Noel terminated the representation and retained J. Clifton Wilkerson to handle her case. Brantley denied that Butts-Noel had left messages under the door for him regarding her case.

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[7] Brantley testified, on remand, that he required an additional $750 to attempt to restore the case.

From approximately November 1993 until early March 1994 Wilkerson attempted, unsuccessfully, to recover Butts-Noel's file from respondent's office. On March 24, 1994 Brantley sent Wilkerson a letter blaming Butts-Noel for the status of her case and claiming that she likely owed additional fees over and above what had already been paid. That letter read as follows:

> I truly cannot understand or appreciate [Butts-Noel's] attitude when it too [sic] her more than 17 months to pay the minimum fee and return the information necessary to file the CIS Statement... if she had returned just one (1) of the many calls placed to her home and her mother's or in essence extended the same courtesy to myself of [sic] Ms. King as we extended to her this situation could have been avoided.

Brantley closed the letter by stating that it was not in Butts-Noel's best interest to change attorneys and instructing Wilkerson to have Butts-Noel contact him about her case.

In Brantley's July 19, 1999 summation to the DEC, he claimed that Butts-Noel's reason for retaining Wilkerson was strictly monetary. According to Brantley, Wilkerson had quoted a much lower fee for the divorce proceedings, namely $1,800:

> One does not have to a [sic] rocket scientist to determine why this grievant was motivated to create this story. It is the oldest story in the world – money. This grievant seized the opportunity to get a cheaper divorce....

Brantley did not mention, however, that Butts-Noel had already paid $3,580 to respondents and would now have to pay an additional $1,800 to Wilkerson to obtain a divorce.

Wilkerson, too, testified about his involvement in the case. According to Wilkerson, Butts-Noel first met with him on November 19, 1993, at which time she complained that respondents had ignored her numerous requests for information about her case, despite having paid $3,580 in fees to King. Wilkerson testified that he contacted respondents by telephone and followed those efforts with letters to each respondent, in order to secure Butts-Noel's file and a refund of the fee.

Wilkerson further testified about a telephone conversation with Brantley on March 23, 1994, at which time he again requested Butts-Noel's file and the return of the fee. Wilkerson recalled a similar telephone conversation with King:

> I advised Miss King that I was willing to take on the matter. However, I needed the file, because otherwise, I would not be able to do anything.
>
> Ms. Butts-Noel did not have any paperwork. As she represented to me that they never gave her any paperwork. So I had nothing to work with. And I didn't think that it would be necessary, or I didn't see the necessity for my having to go down to the courthouse and piece everything together by getting copies that way. So that I wanted her cooperation as it relates to what I was calling about, and what I intended to ask for. I advised her that I was going to send her an authorization to release the file.
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> Miss King became hostile and defensive and with an adamant tone indicated that under no circumstances were she or her husband, or Mr. Brantley, going to return the retainer. And that as far as she was concerned she and he had acted responsibly in representing her cause. And that Ms. Butts-Noel was a recalcitrant client, in that Ms. Butts-Noel did not follow their advice, their instructions, and did not cooperate with them. And she didn't see any need to turn over the file.

> She indicated to me that I should refer Ms. Butts-Noel back to them. And I advised that Ms. Butts-Noel did not intend to do that because she felt totally frustrated by what she has confronted in the past.
>
> [1T11/4/97 14-15]

Despite Wilkerson's efforts to secure Butts-Noel's file and a refund of the retainer, respondents never complied with his requests.[8]

Wilkerson further testified about Brantley's March 24, 1994 letter, in which Brantley made several representations about the status of the case. Apparently, during his March 23, 1994 conversation with Brantley, Wilkerson had requested, and Brantley had agreed to prepare, an itemized bill to substantiate work performed on Butts-Noel's behalf. Wilkerson never received the bill. As noted earlier, the file was never returned and the retainer was never refunded. Unable to secure the file from respondents, Wilkerson ultimately turned down Butts-Noel's request for representation.

Finally, in March 1994, months after Brantley had agreed to do so and long after Butts-Noel had terminated the representation, Brantley filed a motion to reinstate Butts-Noel's counterclaim. The court denied the motion on the basis that a year had elapsed since the dismissal of the case.

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[8] In fact, Butts-Noel testified that King pulled her aside during a recess of the DEC hearing and "whispered in my ear that there's no reason for us to be here, that it's too bad that MF, and [she was] referring to Mr. Wilkerson, didn't direct me back to the office, all of this could have been resolved." T6/17/99 115.

The DEC found that King violated RPC 1.16 (d) for her failure to turn over the file to Wilkerson and to refund the $3,500 retainer upon termination of the representation, RPC 1.3 for her failure to diligently prosecute the case, RPC 1.4(a) for her failure to comply with Butts-Noel's repeated requests for information about her case and RPC 8.1 (b) for her failure to cooperate with disciplinary authorities in the turnover of Butts-Noel's file. The DEC dismissed the allegation of a violation of RPC 1.5, since King produced a copy of the signed retainer agreement.

The DEC found that Brantley violated RPC 1.1 (a) and RPC 1.3 for his failure to submit a case information statement with the counterclaim filed in the divorce action, failure to timely file a response to the motion to dismiss the case in April 1993, failure to file a motion to restore the case for almost one year and failure to file a new complaint to preserve the claims in Butts-Noel's dismissed counterclaim. The DEC also found violations of RPC 1.3 for his failure to adequately prosecute Butts-Noel's case and RPC 1.4(a) for his failure to keep Butts-Noel reasonably informed about the status of her matter and to comply with her reasonable requests for information about the case. The DEC also found a violation of RPC 1.16 (d) for Brantley's refusal to return Butts-Noel's file and the unearned retainer. Lastly, the DEC found a violation of RPC 8.1 (b) for his "egregious" failure to cooperate with the DEC in both the investigative and hearing stages. The DEC dismissed as inapplicable the remaining alleged violations of RPC 1.5 (e) and RPC 1.15. It also dismissed the alleged violations of RPC 3.3 (a) and RPC 8.4(c),

for lack of clear and convincing evidence that Brantley had filed documents typed over Butts-Noel's signature.

* * *

Upon a de novo review of the record, we are satisfied that the DEC's conclusion that respondents were guilty of unethical conduct is supported by clear and convincing evidence.

It is obvious from the record that these respondents went to great lengths to confound the disciplinary system. In fact, it was difficult at times to cull a cogent set of facts from the vast record. Nevertheless, at its core, the case is not complex and should not have required the amount of time that the disciplinary authorities below were forced to devote to it because of respondents' lack of cooperation.

King was retained in October 1991 to represent Butts-Noel in an action for divorce against her husband, Johnny Noel. King did not file a complaint at that time because Butts-Noel was attempting to reconcile with her husband from approximately October 1991 to June 1992. During that time, Butts-Noel made modest, yet consistent, payments to King, pursuant to an arrangement calling for a minimum $3,500 fee for King's services.

By June 1992 Butts-Noel recognized that the reconciliation was hopeless. Therefore, she contacted King in an effort to reactivate the representation. In that same

month Johnny Noel served Butts-Noel with a complaint for divorce. Butts-Noel then arranged a meeting at King's office on July 30, 1992 where, according to Butts-Noel, she met Brantley for the first time. Butts-Noel testified that King told her that Brantley would be helping King with her case. Butts-Noel knew that the two were associated in some fashion, but was unsure of the exact nature of the professional relationship between respondents. Nonetheless, Butts-Noel was not confused about her conviction that King was her attorney at all times. Indeed, Butts-Noel made all of her payments, totaling $3,580, to King. Some of those payments postdated Brantley's involvement in the case.

Furthermore, it appears from the record that, from January 1992 to November 1992, virtually no work was done on Butts-Noel's case by either respondent. The sole product from respondents' offices during that time appears to be a one-paragraph letter, dated January 13, 1992 from King to Butts-Noel, requesting that she contact the office. From November 1992, when Brantley finally filed the answer and counterclaim, until early March 1993, when he received notice that the case was about to be dismissed, no work was done on the file. Instead, Brantley waited until April 16, 1993 to write to Butts-Noel about the impending dismissal. Still, there was no apparent urgency in April 1993 to ensure that Butts-Noel's case information statement was filed before the scheduled deadline. Indeed, the completed papers were filed out of time on April 26, 1993 and the case was dismissed on that date.

With respect to the alleged violations of RPC 1.16 (mistakenly cited in the complaint as RPC 1.6) by both respondents, it is clear that both acted throughout the case

as Butts-Noel's attorney. We find hollow their assertion that, on July 30, 1992, King transferred the case to Brantley. There is no evidence in the record that the case was transferred to Brantley, there is no substitution of attorney and, in fact, King's office continued to bill Butts-Noel well beyond that date. Indeed, Butts-Noel made payments directly to King after that date. King accepted those payments and, as evidenced by the checks, endorsed them for deposit. Respondents presented no evidence to controvert Butts-Noel's consistent testimony that King was her attorney at all times and that Brantley was merely helping King with the case.

As noted earlier, respondents refused to return the unearned portion of the retainer to Butts-Noel. RPC 1.16(d) requires that an attorney refund any unearned portion of a retainer upon the termination of the representation. Respondents would be hard-pressed to argue that the $3,580 fee was earned. This was a simple divorce with no children and no complicated equitable distribution of assets.[9] Yet, Butts-Noel never obtained a divorce. The little work that was performed was either incomplete, out of time or remedial in nature. The only way respondents might have been entitled to keep the retainer is if it was nonrefundable.[10] However, even a nonrefundable retainer must be returned where, as here, it would be unconscionable to keep it. New Jersey Supreme Court Advisory Committee on Professional Ethics Opinion 644, 126 N.J.L.J. 966 (1990).

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[9] At several points in the record, both respondents asserted that Butts-Noel's was a "simple divorce" with one asset, the house, and no children.

[10] The retainer agreement refers to the minimum fee as "nonrefundable."

Likewise, RPC 1.16(d) required the return of Butts-Noel's original papers and file upon the termination of the representation. Yet, the file, including original documents belonging to Butts-Noel, was never returned. It is unquestionable, thus, that King violated RPC 1.16(d).

Brantley, too, violated that rule for his failure to turn over the file to Wilkerson upon the termination of the representation and, to the extent that he shared in Butts-Noel's fees, for his failure to refund the unearned portion of the fee. Brantley also violated RPC 1.5, which requires that, when the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated in writing to the client before or within a reasonable time after beginning the representation. Brantley never prepared a retainer agreement.

With regard to the charged violation of RPC 1.3, there is little doubt that respondents failed to diligently prosecute Butts-Noel's case. The unrefuted facts are that Butts-Noel's matter was ultimately dismissed for respondents' failure to file a case information statement. Furthermore, no attempt was made to restore the case until more than one year after its dismissal.

For his part, Brantley elected to "help" King with the case. Once he undertook that responsibility, it was incumbent upon him to see that Butts-Noel's case progressed apace. Instead, he allowed the case to languish in his office, unattended for months at a time, in violation of RPC 1.3. The claims made by both respondents that Butts-Noel's unavailability and failure to return the case information statement caused the problems

in the case are without merit. It was respondents' duty, not Butts-Noel's, to monitor the case. Likewise, it was not reasonable for respondents, as they would have us believe, to sit idly while awaiting the return of the completed case information statement and, in the event that it was not forthcoming, to allow Butts-Noel's claims to go unprotected until ultimately dismissed by the court. Moreover, nowhere in the record is there evidence that Butts-Noel was made aware of the importance of providing that information to her attorneys. We found, thus, a violation of RPC 1.1(a) for respondents' complete failure to prosecute the case or to otherwise protect their client's claims. The record contains sufficient evidence to support a finding of gross neglect with regard to both respondents. Although King was not specifically charged with a violation of RPC 1.1(a), the facts in the complaint gave her sufficient notice of the alleged improper conduct and of the potential violation of that RPC. Furthermore, the record developed below contains clear and convincing evidence of a violation of RPC 1.1(a). King did not object to the admission of such evidence in the record. In light of the foregoing, we deemed the complaint amended to conform to the proofs. R. 4:9-2; In re Logan, 70 N.J. 222, 232 (1976).

In Brantley's case, the complaint alleged a pattern of neglect, in violation of RPC 1.1(b). We found that Brantley's misconduct in this matter, when combined with his gross neglect in prior ethics matters, amounted to a pattern of neglect, in violation of RPC 1.1 (b).

With regard to the alleged violations of RPC 1.4(a), Butts-Noel testified that she made numerous attempts to contact respondents over the course of the representation, without success. Butts-Noel recalled numerous unreturned telephone calls, messages left on respondents' answering machines and notes slipped under King's office door. Both respondents denied that they failed to keep Butts-Noel informed about events in the case as they unfolded, but neither presented documentation, beyond the several letters in evidence, that they communicated with her. Moreover, the DEC had an opportunity to assess the credibility of Butts-Noel in this regard and came to the conclusion that she was believable. Her efforts to gather information about her case were largely ignored by these respondents. Their failure to communicate with Butts-Noel was, thus, a clear violation of RPC 1.4(a).

One of the most troubling aspects of this case was respondents' failure to cooperate with disciplinary authorities. Although attorneys often fail to cooperate with the ethics system by burying their heads in the sand when faced with a grievance, these respondents set about a scorched-earth strategy of intimidation, false accusations and intolerable disrespect for the hearing panel and its individual members and attempted to protract the proceedings, when it appeared that things were not going their way. Respondents are not newcomers to the disciplinary system. Each is well aware of the requirement of cooperation with ethics authorities in all phases of a disciplinary proceeding. Yet, from the inception of the DEC investigation, they ignored and/or misled the investigator, and later the panel, in a series of calculated maneuvers designed

to thwart the investigation and to delay the hearing process. Certified mail addressed to King's and Brantley's respective offices was returned unclaimed, only to be followed by correspondence from respondents using those same addresses on their letterhead. In the Spring of 1997 respondents requested an adjournment of the DEC hearing, in order to file motions with us and/or the Court. There is no evidence that these motions were ever filed. They ignored the presenter's discovery demands for documents and identification of defense witnesses. When the hearing finally took place on August 11, 1997, respondents arrived late and left early, during King's cross-examination of Butts-Noel. On the return date of September 17, 1997, with the panel present, Butts-Noel ready to testify and a court reporter in place, respondent Brantley called to request an adjournment, alleging that King was ill. When the panel chair required documentary proof of the alleged medical condition, that proof was not submitted until later.

This pattern of behavior resurfaced immediately upon the continuation of the hearings on remand. For example, on the first post-remand hearing date, December 14, 1998, the first eighty-nine pages of transcript were devoted to King's attempt to wrest control of the proceedings and to dictate how they should proceed. On the following hearing date, January 28, 1999, respondents were more than two hours late. The only statement they offered was that they were running late. The only scheduled witness that day had arrived on time to be cross-examined by respondents. Therefore, nothing could be accomplished until respondents arrived. Respondents later complained that they had insufficient time to cross-examine that witness and requested the witness' return at a later

date to complete the cross-examination, without any regard to their fault in causing the problem due to lateness. The record from that day forward was rife with examples of their contempt for the disciplinary system. Indeed, on the final hearing day, June 21, 1999, Brantley hurled his final insult by introducing into evidence documents that had been in his possession since the inception of the case, years earlier. Obviously, he had not looked for them until he needed them to press his own case. For all of the foregoing reasons, we had no difficulty finding that respondents deliberately set about to thwart the disciplinary process, in violation of RPC 8.1 (b).

With regard to the remaining alleged violations of RPC 1.5 (e), RPC 1.15, RPC 3.3 (a) and RPC 8.4(c), the DEC was correct to dismiss those charges for lack of clear and convincing evidence.

There remains the issue of the appropriate quantum of discipline for these respondents. The DEC recommended that both be suspended for an unspecified term. Given the ethics histories of these respondents, stern discipline is warranted.

Ordinarily, the type of misconduct exhibited by King in this case would warrant a reprimand. See, e.g., In re Bashir, 143 N.J. 406 (1996) (reprimand imposed where the attorney grossly neglected a litigation matter and failed to cooperate with disciplinary authorities); and In re Capodici, 158 N.J. 109 (1999)(reprimand imposed for gross neglect, lack of diligence and failure to communicate with client). However, she was reprimanded in February 1998 and suspended for three months in March 1999 for similar misconduct. Also, as previously noted, her failure to return the retainer in one of those

matters led to her temporary suspension in June 1998, which remains in effect. Given the defiant nature of King's conduct toward the disciplinary system and her prior ethics record, we unanimously determined to impose a one-year suspension, to be served upon the conclusion of the previously ordered three-month suspension, which will be served once the temporary suspension, presently in effect, is vacated. We also required her to provide, prior to reinstatement, a report from a psychiatrist approved by the Office of Attorney Ethics, attesting to her fitness to practice law.

Brantley, too, is a recidivist with an even more significant history of gross neglect, lack of diligence, failure to communicate and failure to cooperate with disciplinary authorities. Since 1982 he has received three private reprimands, a one-year suspension, a three-month suspension and a reprimand for similar misconduct, including gross neglect, lack of diligence, failure to communicate, conduct involving dishonesty, fraud, deceit or misrepresentation and failure to cooperate with disciplinary authorities. In January 1997 we issued him a stern warning that we might recommend his disbarment for further acts of misconduct. We are aware that the within misconduct pre-dated that warning. However, there comes a time when the sheer weight of an attorney's record of ethics infractions is too great for the system to bear, thus warranting disbarment. Because of respondent Brantley's obvious refusal to conform his behavior to professional standards – this is his seventh brush with the disciplinary system – we determined that disbarment is warranted. A four-member majority so recommends to the Supreme Court. Three members dissented, voting for a three-year suspension. See, e.g., In re Goldstaub,

152 N.J. 33 (1997) (attorney disbarred for engaging in a pattern of gross neglect, lack of diligence, failure to communicate, misrepresentation and failure to cooperate with disciplinary authorities in five matters; two prior one-year suspensions, one retroactive suspension and a temporary suspension) and In re Clark, 158 N.J. 250 (1999) (attorney disbarred for gross neglect, lack of diligence, charging an unreasonable fee, failure to return unearned retainer, failure to communicate with clients and failure to cooperate with ethics authorities in four matters; the attorney had a significant disciplinary history over the prior nine years, including two reprimands, a temporary suspension for failure to pay a fee arbitration award and a three-month suspension.)

Two members did not participate in the review of these matters.

We also determined to require respondents, both jointly and severally, to reimburse the Disciplinary Oversight Committee for administrative expenses.

Dated: 8/22/01

ROCKY L. PETERSON
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of S. Dorell King
Docket No. DRB 00-330

Argued: **December 21, 2000 (but carried for deliberation until March 15, 2001)**

Decided: **August 22, 2001**

Disposition: **One-year suspension**

Members	Disbar	One-year Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling							X
Peterson		X					
Boylan		X					
Brody		X					
Lolla		X					
Maudsley							X
O'Shaughnessy		X					
Schwartz		X					
Wissinger		X					
Total:		7					2

Robyn M. Hill

Robyn M. Hill
Chief Counsel

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of David Brantley
Docket No. DRB 00-331

Argued: December 21, 2000 (but carried for deliberation until March 15, 2001)

Decided: August 22, 2001

Disposition: Disbar

Members	Disbar	Three-year Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling							X
Peterson		X					
Boylan		X					
Brody	X						
Lolla	X						
Maudsley							X
O'Shaughnessy	X						
Schwartz	X						
Wissinger		X					
Total:	4	3					2

Robyn M. Hill

Robyn M. Hill
Chief Counsel