SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 04-069

IN THE MATTER OF	:
E. LORRAINE HARRIS	:
AN ATTORNEY AT LAW	:

Decision

Argued: April 15, 2004

Decided: May 25, 2004

Mati Jarve appeared on behalf of the District IV Ethics Committee.

Respondent waived appearance for oral argument.

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

This matter was before us on a recommendation for discipline (reprimand) filed by the District IV Ethics Committee (DEC).

Respondent was admitted to the New Jersey bar in 1994.

On September 28, 1999, she was temporarily suspended for potential misappropriation of escrow funds. In re Harris, 162 N.J. 2 (1999). On October 26, 1999, she was reinstated, with certain restrictions. On January 10, 2000, she was temporarily

suspended for failure to comply with a fee arbitration determination. In re Harris, 162 N.J. 189 (2000). She was reinstated on January 19, 2000. On September 7, 2000, she received a reprimand for failure to provide a client with the basis or rate for her fee, in writing, and failure to utilize a retainer agreement. In re Harris, 165 N.J. 471 (2000). In 2000, she received an admonition in connection with another matter, in which she again failed to provide a client with a written basis or rate for her fee. In the Matter of E. Lorraine Harris, Docket No. DRB 99-037 (September 27, 2000).

On May 8, 2001, effective June 4, 2001, she was suspended for six months for gross neglect, lack of diligence, charging an unreasonable fee, failure to safeguard client property, failure to promptly deliver funds to a third party, recordkeeping violations, false statements of material fact and misrepresentations in letters to a municipal court about her failure to appear at a hearing and about her receipt of court notices, failure to cooperate with disciplinary authorities, and misrepresentation. Thereafter, on June 4, 2001, the Court temporarily stayed the suspension to allow the full Court to review her motion for reconsideration and remand. On June 5, 2001, the Court vacated the temporary stay and denied respondent's motion. In re Harris, 167 N.J. 284 (2001).

Also on May 8, 2001, respondent was suspended for three months, effective December 4, 2001, for lack of diligence, failure to expedite litigation, knowingly making a false statement of material fact to a tribunal, failure to cooperate with disciplinary authorities, and misrepresentation. In that case, respondent requested and obtained numerous last-minute adjournments of a client's municipal traffic matter. On one trial date, respondent failed to appear. Later that day, the judge found a "faxed" letter from respondent on the court's fax machine, thanking the court for granting her adjournment request that morning. However, no such request had been made or granted by the judge. In re Harris, 167 N.J. 284 (2001).

Although respondent's last suspension expired on March 4, 2002, she has not applied for reinstatement. Further, a matter is pending with the Supreme Court in which we voted to impose a one-year suspension for a variety of misconduct in five matters, including gross neglect in two of the matters, lack of diligence in four of the matters, failure to communicate with the client in three of the matters, lying to a court in two matters, failure to return the entire file upon termination of the representation in one of the matters, and conduct prejudicial to the administration of justice in one of the matters. In the Matter of E. Lorraine Harris, Docket No. DRB 03-150.

Another matter is pending with the Court. We recently voted to impose a six-month suspension for misconduct in two matters. In one matter, respondent refused to return an improperly received fee, after a fee arbitration determination required her to do so, violating RPC 1.3, RPC 1.16(d), RPC 3.4(c), and RPC 8.4(c). She lacked diligence in a second matter, in violation of RPC 1.3. In the Matter of E. Lorraine Harris, Docket Nos. DRB 03-385 and DRB 03-386.

This matter was originally decided in a December 2002 default, under Docket No. DRB 02-157. We later remanded it for the filing of respondent's answer and a hearing, as detailed below.

Shortly after receiving our decision in the default matter, on December 20, 2002, the complainant, Stephen M. Orlofsky, Esq., a federal judge at the time, sent a letter to us objecting to our decision in DRB 02-157, which involved respondent's representation of a federal civil rights plaintiff, Mark Clement. Judge Orlofsky complained that we found no violation of RPC 3.1 (frivolous lawsuit), noting that he had made that finding with respect to respondent's handling of the civil rights matter before him. He was also distressed with the level of discipline and urged us to consider "far more severe discipline" than the one-year suspension voted for.

Thereafter, respondent filed with the Supreme Court a Petition for Relief from our recommendation, claiming that she had found proof in her file that the DEC had allowed her to file a late answer, but it had subsequently reneged on that promise, and seeking to vacate default in the underlying Clement matter.

Finally, the Office of Attorney Ethics ("OAE") filed a motion for reconsideration with us citing the same arguments as were contained in the judge's letter.

We remanded the matter (along with the two other companion cases) for the filing of answers and hearings. The OAE motion was dismissed as moot.

The Clement matter has now returned post-remand. There is, however, little testimony on the majority of the original complaint's charges. The DEC panel chair explained the short record in his panel report, which states in part:

> The Ethics Complaint in this matter was instigated by a Federal Judge because of his obvious displeasure with Respondent in bringing this action and not taking a voluntary dismissal. It should be noted that the Federal Judge, although notified of the hearing, did not appear at the hearing.

The complaint alleged violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 3.1 (filing a frivolous lawsuit), RPC 3.2 (failure to expedite litigation and lack of courtesy and consideration for persons involved in the

legal process), RPC 1.1(b) (pattern of neglect), and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

In November 1999, respondent filed a civil rights action in the United States District Court for the District of New Jersey ("DNJ"), in behalf of her client, Mark Clement.

The civil rights complaint alleged that Clement, a forklift operator for the E.P. Henry Company ("Henry"), had been spit upon and subjected to racial slurs by a man named "Mark," referred to in that complaint as defendant "John Doe". Doe was alleged to be an agent of defendant Public Service Electric and Gas Company, Inc. ("PSE&G"). At the time of the incident, Clement was acting within the scope of his employment, and PSE&G was performing contractual services at the Henry offices.

The civil rights complaint advanced two theories for recovery. The first was based on the so-called Opposition Clause found in Section 2000e-3(a) of the Civil Rights Act of 1964. It is reserved for employee claims against employers. Yet, Clement was not an employee of PSE&G. The second theory was founded upon 42 U.S.C. Section 1983, titled Civil Action for Deprivation of Rights. Section 1983 allows individuals to seek redress where the actor has acted under color of state law. Neither PSE&G nor defendant Doe was an entity of the State of New Jersey.

The ethics complaint alleged that respondent made no inquiry into the facts of the case prior to filing the civil rights complaint and that, thereafter, respondent "did not make reasonable efforts to expedite the matter, but persisted in pursuing the matter after having been notified that the matter was frivolous". These few facts were offered as evidence of RPC 1.1(a), RPC 1.3, RPC 3.1, and RPC 3.2.

With regard to RPC 1.1(a) and RPC 1.3, the DEC did not elicit testimony concerning gross neglect or lack of diligence, nor did it develop the record based on the documents in evidence as to those issues. The record demonstrates that respondent was somewhat active in the case from its inception in November 1999 until April 2001, when Judge Orlofsky dismissed the amended complaint for failure to state a claim upon which relief could be granted. Respondent did not oppose the motion.

Respondent testified at the DEC hearing that she did not neglect the matter; rather, she claimed, the only good case for discrimination was to be made against Henry. However, Clement insisted that Henry be removed as a defendant, because he thought the lawsuit would imperil his job.

Respondent also testified about conversations that she had with her client about the case: she communicated with the National Association for the Advancement of Colored People

(NAACP), the organization that had referred the matter to respondent, and she met with representatives of PSE&G to discuss the claim. According to respondent, she also conducted a significant amount of legal research, using research tools that she had purchased expressly for civil rights litigation. Finally, she stated that she sent her civil rights complaint to an East Orange law firm specializing in civil rights litigation, prior to filing it. Respondent did not elaborate on the outcome of that firm's review.

Finally, respondent claimed that her failure to oppose PSE&G's motion to dismiss the amended complaint was not neglectful. Rather, she claimed, by the time that motion was filed, the judge had made it clear to her that the claim was deficient, and that the amended complaint would not survive a motion for its dismissal.

With respect to the alleged violation of RPC 3.1, that rule reads, in relevant part:

> A lawyer shall not bring or defend a proceeding, nor assert or controvert an issue therein unless the lawyer knows or reasonably believes that there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. [Emphasis added.]

Respondent testified that, at the time of the representation, she believed that a reasonable basis existed for

Clement's claim, and that it was not a frivolous lawsuit. She explained that she had contacted the New Jersey "division of engineering," and was told that "at least 25 percent of the commercial business handled by PSE&G came from the State of New Jersey." According to respondent, she intended to argue that those contracts could be construed as "state action."

Hope Pomerantz, Esq., PSE&G's in-house counsel assigned to the Clement litigation, testified at the DEC hearing about the reasonableness of respondent's actions:

> I moved to dismiss the complaint on several grounds. The first was that there was no claim filed at any state or federal agency which is the jurisdictional prerequisite of bringing a claim in federal court under Title VII without which my allegation and the court confirmed you may not proceed. The second averment was that the Opposition Clause in Title VII didn't apply to this case at all as these were completely unrelated parties. Mr. Clement never alleged that and never has worked for a different company whose building happened to be where our men were working and so that didn't entitle him to bring claim under Title VII, and the last legal argument was that we are not a Section 1983 defendant. We are a publicly owned and traded corporation on the New York Stock Exchange, and although we are regulated by the BPU, there have been several opinions in this circuit and in many others that a public utility is not a state actor and we are not a 1983 defendant. We have never been held to be a 1983 defendant, and even a brief review of all of our published documents, including our annual report, would show anybody who recently took

> a look that we are not an appropriate Section 1983 defendant.
>
> [T23-14 to T24-13.][1]

Pomerantz moved to dismiss the complaint and asked for the imposition of sanctions under Rule 11(b) (1&2) of the Federal Rules of Civil Procedure. The rule provides:

> By presenting to the Court (whether by signing, filing, submitting or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, --
>
> (1) it is not being presented for any improper purpose, such as to harass or to cause delay or needless increase in the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or by establishment of new law . . . .

Respondent opposed that motion, claiming that

> . . . an agency relationship existed and that a non-frivolous argument for the extension of existing law could be applied based on the uniqueness of the relationship between the plaintiff and the defendant PSE&G and the egregious nature of the defendant's conduct.
>
> [Exhibit 8 at 4.]

---

[1] T refers to the transcript of the DEC hearing.

On December 11, 2000, Judge Orlofsky issued an opinion ordering respondent to show cause why the complaint should not be dismissed, and Rule 11(b) sanctions imposed for filing a frivolous action. The judge pointed out the weaknesses in respondent's complaint, and gave her an opportunity to correct the deficiencies by filing an amended complaint. The court stated:

> It is clear from the literal language of the Opposition Clause that a plaintiff who asserts a claim based upon it must be an employee of an employer who has retaliated against that employee because the employee has opposed any practice by the employer which is unlawful under Title VII. Clement, according to the Complaint, was not an employee of PSE&G. Thus, the Opposition Clause can have no application to the facts and circumstances alleged in the Complaint. Obviously, Clement cannot state a claim under the Opposition Clause against PSE&G and Doe, assuming of course that Clement is proceeding under Title VII. Moreover, there is nothing contained in the Complaint which indicates that prior to filing this action Clement filed a timely charge of employment discrimination with the Equal Employment Opportunity Commission ('EEOC') and received a 'right to sue' letter from the EEOC.
>
> [Exhibit 7 at 6, Citations omitted.]

On January 10, 2001, respondent filed an amended complaint. However, the facts alleged in the amended complaint were basically the same as in the original pleading. No new facts were included that might have better suited a civil rights case.

Therefore, on January 23, 2001, the judge issued a supplemental opinion. In it he dismissed the complaint for failure to state a claim upon which relief could be granted, and imposed sanctions under Rule 11(b), for filing a frivolous lawsuit.

On April 4, 2001, the magistrate held a "case management" conference in the case. Pomerantz was present that day, and updated the court as follows:

> If I may, Your Honor, the initial complaint was dismissed by Judge Orlofsky in December of 2000, an additional order was submitted and an opinion published in January with respect to sanctions on the underlying complaint. In between the issuance of Judge Orlofsky's two opinions, the plaintiff's counsel filed an amended complaint in [sic] which she was entitled to, pursuant to the order that was issued in December. The defense moved to dismiss that amended complaint as well for substantially the same reasons as it moved to dismiss the original complaint.
>
> [Exhibit 12 at 2.]

Respondent, too, was present at the hearing, and defended the claims in the amended complaint by taking the position that "an attorney is allowed to present novice ideas." Respondent insisted that she was simply standing by her client, who had been "damaged" by the racial incident. She further explained that the complaint "was based upon federal law under the Badge of Slavery, [and] the 13th Amendment". Respondent further noted that, because PSE&G "is a large client of the State of New

Jersey," the action of its employees could be termed state action.

Respondent then claimed that the court had engaged in "racial profiling," "at a professional level," and that respondent was targeted for unfair treatment by that court. According to respondent, "I'm a victim again, as well." Respondent asserted that only the DNJ could properly adjudicate Clement's claims, because a "financial prejudice" permeated the New Jersey state courts, "wherein PSE&G is a substantial client with the State of New Jersey and we believe that that would hinder Mr. Clement's case."

Finally, respondent argued that both her client and her proctor, Angelo Falciani, Esq., had urged her not to reply to the motion to dismiss the complaint. However, respondent did not give the reasoning behind those alleged positions. Rather, she expressed her own belief that she had been mistreated by the federal court, and that, therefore, Clement's case would not be treated fairly there.

At the DEC hearing, respondent again maintained that she was following Clement's instructions by not replying to PSE&G's second dismissal motion. She also claimed that she had wanted to be relieved as counsel, but Clement repeatedly failed to take action to seek substitute counsel.

Respondent conceded, however, that she took no action thereafter to be relieved as counsel, and remained counsel of record throughout the events of April 2001.[2]

The DEC did not pursue that aspect of RPC 3.2 charging respondent with lack of courtesy and consideration for persons involved in the legal process.

The DEC dismissed the alleged violations of RPC 1.1(a), RPC 1.3, RPC 3.1, RPC 3.2, and RPC 1.1(b). The DEC found that respondent violated only RPC 8.1(b) (failure to cooperate with disciplinary authorities), and recommended the imposition of a reprimand.

Upon a de novo review, we are satisfied that the DEC's conclusion that respondent was guilty of unethical conduct is supported by clear and convincing evidence. We also find that the DEC correctly dismissed the majority of the charges against respondent.

Specifically, with regard to RPC 1.1(a), RPC 1.3, and RPC 3.2, the record does not contain clear and convincing evidence of gross neglect, lack of diligence or failure to treat persons involved in the litigation with courtesy. Rather, respondent was active in the matter until PSE&G's motion to dismiss the amended

---

[2] Respondent was suspended from the practice of law on May 8, 2001, effective June 4, 2001.

complaint. Respondent's failure to reply to that motion was purposeful. The record contains her unrefuted claim that both her client and her proctor advised her not to file a response. For these reasons, we dismiss the charges of violations of RPC 1.1(a), RPC 1.3, and RPC 3.2.

With regard to RPC 3.1, the question before us is whether respondent was reasonable in her belief that the Clement facts formed the basis for a civil rights action. Respondent claimed to have spent considerable time investigating the facts with Clement, the NAACP, PSE&G, an East Orange law firm specializing in civil rights cases, and others. Respondent also claimed to have spent hours researching statutes and case law, before determining to file a complaint.

However, both her adversary and Judge Orlofsky held a different view. Respondent did not challenge Pomerantz' DEC testimony that a cursory review of Section 1983 in the Third Circuit would have revealed to her that PSE&G did not fall under the statute, and, therefore, PSE&G was not a proper defendant in the action.

So, too, Judge Orlofsky's supplemental opinion cited respondent's own words and actions to debunk the claim that her belief was reasonable. Pointing to both her affidavit and letter brief, the judge noted that they contained a "litany of

self-serving excuses for what can only be described as a shocking lack of diligence and incompetence."

In her affidavit, respondent admitted that she relied on "various texts and treatises" to prepare her pleadings and that, in the Clement matter, she based the complaint upon a form she found in a practice manual. Because the practice manual form complaint pleaded the Opposition Clause of Title VII in a case having facts similar to Clement's, she "reasonably believed that the clause applied." The judge, however, cited to his earlier opinion in Clement, wherein he expressly stated that the Opposition Clause was applicable only to a plaintiff who was an employee of an employer that had retaliated against that employee because the employee had opposed some practice by the employer that was unlawful under title VII. Since Clement was not an employee of the defendant, PSE&G, the clause could have no application to his situation.

It was clear to Judge Orlofsky that respondent had merely copied the form complaint without conducting any independent legal research or examining the facts to determine the form complaint's applicability to her case.

The judge then quoted from respondent's own affidavit to further support his opinion that she could not have held a reasonable belief in the viability of her complaint. In that

affidavit, respondent explained her failure to file a timely charge with the Equal Opportunity Commission before filing a Title VII action in federal court, by acknowledging that she was unaware of that requirement; she had failed to read the entire statute; she read only the Opposition Clause, which does not contain the jurisdictional prerequisite. Nevertheless, she asked Judge Orlofsky "to take judicial notice that the annotated version spans several hundred pages, and that the jurisdictional prerequisite, is, apparently, not well known to even some practitioners more familiar with Title VII than myself."

Judge Orlofsky found respondent's admission in that regard "simply mind boggling." It was proof to him that respondent not only failed to conduct a reasonable inquiry into the facts and law prior to filing the complaint in Clement, but that respondent was "incapable of doing so, and [did] not even understand why."

He also noted respondent's admission that, in making the Section 1983 allegation in Count Two of her complaint, she relied again on the practice manual, specifically, its citation to "a case indicating that employers who contract a substantial percentage of their business with the State could be considered State actors." Respondent also "readily acknowledge[d] that [she] did not fully understand the vagaries of the statute's

'State action' requirement," but that it seemed "reasonable to infer that the State, with all its many buildings and other facilities, must be PSE&G's largest customer by far." Because respondent failed to identify the case to which the practice manual referred or the PSE&G customer report she reviewed, the judge concluded that, as to this Section 1983 count, respondent had also "failed to conduct even a rudimentary pre-complaint investigation prior to filing the Complaint in this case."

Citing a series of Third Circuit cases, the judge held that "reasonableness under the circumstances" is the standard against which an attorney's conduct is to be evaluated for purposes of determining whether a suit is frivolous under Rule 11. These cases stand for the proposition that an attorney "is required to conduct 'a reasonable inquiry into both the facts and the law supporting a particular pleading'" or face sanctions. To Judge Orlofsky, it was "painfully obvious in this case that [respondent] ha[d] filed a complaint that is 'frivolous, legally unreasonable, or without factual foundation.'"

We are persuaded that Judge Orlofsky's analysis resolves the issue of reasonableness. Respondent was engaged in wishful thinking, as opposed to zealous advocacy, in the Clement civil rights matter. For the reason cited by the judge, respondent's

belief in the legal sufficiency of the case was not reasonable, and, therefore, violated RPC 3.1.

Finally, there remains the alleged violation of RPC 8.1(b) for failure to cooperate with ethics authorities during the investigation of the matter. This ethics matter was originally a default, which we remanded after determining that respondent may have been given additional time to file an answer to the original ethics complaint. In effect, the remand wiped the slate clean with regard to cooperation. Since then, respondent has fully cooperated, having filed her answer and appeared as required at the DEC hearing. For these reasons, we dismiss the charge related to RPC 8.1(b).

Cases involving the filing of frivolous lawsuits have been met with either an admonition or a reprimand. See, e.g., In the Matter of Alan Wasserman, Docket No. DRB 92-228 (October 5, 1994) (admonition for attorney who instituted a frivolous second lawsuit against an insurance carrier for legal fees, without notice to his client, after a prior suit against the client to collect that legal fee had been dismissed); and In re Dienes, 118 N.J. 403 (1990) (public reprimand for attorney who, in response to a civil action motion seeking the imposition of monetary sanctions for filing a frivolous suit, sent a letter to the chairman of defendant-corporation, which included an

improper threat to disclose information about lax security at defendant-corporation to an investigative reporter, if defendant-corporation did not withdraw its demand for counsel fees in the pending federal civil action).

Here, respondent's misconduct is aggravated by her disciplinary history. Respondent filed the Clement complaint in November 1999, less than one month after her reinstatement from a temporary suspension, and several weeks before her receipt of our December 6, 1999, decision to admonish her in another matter. In June 2000, we issued decisions in two more ethics matters, as a result of which the Court imposed three-month and six-month suspensions the following year. Obviously, respondent knew the importance of conforming her behavior to the standards required of attorneys who practice law in this state, whether in state or federal court. Yet, she chose not to do so, by forging ahead in Clement, despite obvious indications that the case was without merit.

For these reasons, we unanimously determine to impose a reprimand. Two members did not participate.

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

Disciplinary Review Board
Mary J. Maudsley, Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of E. Lorraine Harris
Docket No. DRB 04-069

Argued: April 15, 2004

Decided: May 25, 2004

Disposition: Reprimand

Members	***Disbar***	***Suspension***	***Reprimand***	***Admonition***	***Dismiss***	***Disqualified***	***Did not participate***
Maudsley			X				
O'Shaughnessy							X
Boylan			X				
Holmes			X				
Lolla			X				
Pashman			X				
Schwartz							X
Stanton			X				
Wissinger			X				
Total:			7				2

Julianne K. DeCore
Chief Counsel