

FILE NO. A08-2097
STATE OF MINNESOTA
IN SUPREME COURT

In Re Petition for Disciplinary
Action against JILL M. WAITE,
a Minnesota Attorney,
Registration No. 191152.

**SUPPLEMENTARY PETITION
FOR DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this supplementary petition for disciplinary action pursuant to Rules 10(e) and 12(a), Rules on Lawyers Professional Responsibility (RLPR).

Respondent is currently the subject of an August 29, 2008, petition for disciplinary action. The Director has investigated further allegations of unprofessional conduct against respondent.

The Director alleges that respondent has committed the following additional unprofessional conduct warranting public discipline:

FOURTH COUNT

The Honorable Michael J. Davis Matter

65. H.S. retained respondent to represent him in a civil claim against the City of Minneapolis and individual police officers. H.S. alleges he was beaten by Minneapolis police officers.

66. Beginning in May 2004, the Federal District Court for the District of Minnesota implemented the case management/electronic filing (CM/ECF) system which required cases, with a few exceptions, to be filed electronically. As part of the CM/ECF system attorneys are required to maintain a current e-mail address and if the e-mail address changes, attorneys are required to update the information on ECF. Pursuant to these rules, respondent provided the court with an e-mail address which the court used to provide notice.

67. On April 12, 2006, respondent filed a complaint in the matter in federal court, demanding a jury trial.

68. On May 4, 2006, the Court issued a notice of pre-trial conference scheduled for June 29, 2006. Pursuant to Rule 26(f), Rules of Federal Civil Procedure, at least 21 days before the pre-trial conference the parties must confer to consider the basis of their claims and defenses and the possibilities for a resolution of the case, to make or arrange for the disclosures required by Rule 26(a)(1), and to develop a proposed discovery plan. Rule 26(f) further requires that parties submit a written report outlining their plan.

69. On June 27, 2006, counsel for defendants filed a document entitled "Defendant's Rule 26 (f) Report." In this document defendants state the parties did not participate in the meeting required by Rule 26(f), and that they made numerous attempts to contact respondent to schedule the meeting without success. Defendants forwarded draft copies of the Rule 26(f) report to respondent and received no response. Defendants note their last contact with respondent was an e-mail from respondent on June 23, 2006, requesting a copy of the report be forwarded.

70. On June 30, 2006, the court issued a pretrial scheduling order. Pursuant to the court's order, pre-discovery disclosures were to be made by July 20, 2006, the identity of expert witnesses disclosed by July 1, 2007, motions to amend the pleadings were to be served by October 15, 2007, and all motions were to be filed and heard by November 1, 2007. The order also provides that the case shall be ready for a jury trial by November 1, 2007.

71. On November 13, 2007, the court issued a notice to the parties that they were on a trial block for February 1, 2008. The notice also provided the parties submit several documents by January 18, 2008, including a statement of the case, exhibit list, witness list, list of deposition testimony being offered into evidence, and proposed voir dire questions. The court sent notice of the November 13, 2007, pretrial order to respondent by e-mail in accordance with the ECF procedures.

72. Respondent failed to submit any documents to the court as directed in the court's November 13, 2007, order.

73. On January 17, 2008, the court's calendar clerk (clerk) called respondent and spoke with respondent's adult daughter, who, at the time, served as respondent's legal assistant. The clerk informed respondent's daughter that February 4, 2008, was the date certain trial date, and told her to refer to the November 13, 2007, order, for the due dates for trial submissions.

74. On January 22, 2008, at 8:59 a.m., the clerk called respondent again, but was unable to leave a message as respondent's answering machine was full.

75. On January 22, 2008, at 9:01 a.m., the clerk e-mailed respondent stating that trial submissions were due Friday, January 18, and that the court had heard from opposing counsel that joint jury instructions had not been completed. The e-mail further requested respondent to inform the court when respondent would have the documents to the court, and reminded respondent of the February 4, 2008, trial date.

76. On January 22, 2008, the court issued an order requiring respondent to "submit a statement of the case, exhibit list, witness list, list of deposition testimony, all motions in limine, proposed voir dire, joint proposed jury instructions, and a proposed special verdict form, all submitted in the manner set forth in the court's November 13, 2007, order, by noon Friday, January 25, 2008. If Plaintiff fails to submit the required material by noon on January 25, 2008, this case will be **dismissed with prejudice.**" The court sent notice of the order to respondent by e-mail.

77. Respondent failed to submit any additional documents to the court by January 25, 2008, pursuant the court's November 13, 2007, and January 25, 2008, orders. After the noon deadline had passed, the clerk called respondent and left a message requesting respondent to call back immediately. Respondent failed to contact the court in response to the message.

78. On January 25, 2008, the court signed an order dismissing the case with prejudice stating respondent had "frequently disobeyed Court orders without any explanation or excuse."

79. Respondent has since arranged for an attorney to represent H.S. in an appeal to the 8th Circuit Court of Appeals. The case has been argued and is currently under advisement by that court.

80. Respondent's conduct violated Rules 1.1, 1.3, 3.4(c), 5.3 and 8.4(d), Minnesota Rules of Professional Conduct (MRPC).

FIFTH COUNT

Catherine Dunham Matter

81. Respondent represents Catherine Dunham's ex-husband in post-decree family matters.

82. On February 19, 2008, respondent wrote Dunham, enclosing a check in the amount of \$7,207.13 in payment of a judgment entered against Dunham's ex-husband in favor of Dunham on June 2, 2006. Respondent also enclosed a satisfaction of judgment and a stipulation and order for vacation of order for disclosure. Respondent's letter requested that Dunham sign and return the satisfaction and the stipulation.

83. On February 25, 2008, Dunham executed the satisfaction and stipulation and promptly returned said documents to respondent.

84. On April 7, 2008, respondent sent the court and Dunham a motion and affidavit requesting satisfaction of judgment, order vacating order for disclosure, and an award of attorney fees. Respondent's notice of motion requested an April 30, 2008, hearing date regarding the motion

85. On April 9, 2008, Dunham wrote respondent, stating that she had previously sent the satisfaction to respondent in February, and that respondent could have requested another copy if necessary. Dunham enclosed a copy of the previously submitted satisfaction with her letter and carbon copied the Dakota County District Court.

86. On April 21, 2008, Dunham called the court to inquire whether the hearing had been cancelled by respondent and was told the hearing had not been cancelled.

87. On April 24, 2008, Dunham and respondent appeared in court for a hearing regarding child support. Respondent confirmed with Dunham's attorney that

she had received the satisfaction sent by Dunham on April 9, 2008. Respondent did not ask Dunham to sign a new satisfaction and did not agree to cancel the hearing.

88. On April 30, 2008, a hearing was held regarding respondent's motion.

89. On May 8, 2008, the court issued an order denying respondent's motions. The court attached a memo to the order stating the basis for denying respondent's motion and calling the April 30 hearing "unnecessary."

90. Respondent's conduct in this matter violated Rule 8.4(d), MRPC.

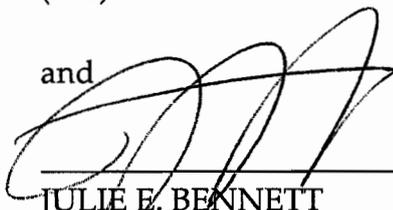
WHEREFORE, the Director respectfully prays for an order of this Court imposing appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: February 6, 2009.



MARTIN A. COLE
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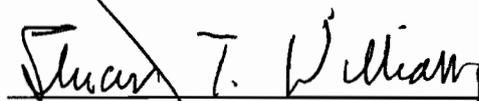
and



JULIE E. BENNETT
ASSISTANT DIRECTOR
Attorney No. 289474

This supplementary petition is approved for filing pursuant to Rule 10(e), RLPR, by the undersigned.

Dated: 2/9, 2009.



STUART T. WILLIAMS
PANEL CHAIR, LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD