

BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:)
)
ALVIN PHILLI PORTIS,)
) Commission No. 2023PR00063
Attorney-Respondent,)
)
No. 6294643.)

COMPLAINT

Jerome Larkin, Administrator of the Attorney Registration and Disciplinary Commission, by his attorney, Richard Gleason, pursuant to Supreme Court Rule 753(b), complains of Respondent Alvin Philli Portis, who was licensed to practice law in Illinois on December 18, 2007, and alleges that Respondent has engaged in the following conduct which subjects him to discipline pursuant to Supreme Court Rule 770:

COUNT I

(Lack of Diligence, Failure to Expedite Litigation, and False Statements)

1. During the events described in this complaint, Respondent was employed as an Assistant State’s Attorney (“ASA”) in the Office of the Cook County State’s Attorney (“CCSAO”) in the CCSAO’s Civil Actions Bureau in Chicago, where his responsibilities included representing Cook County and various Cook County agencies or boards in the defense of allegations made against them, typically in litigation matters filed in state court.

2. During that same period of time, the Illinois Counties Act (“the Act”) [55 ILCS 5/3-9005 (Powers and Duties of State’s Attorney)] provided in part that “the duty of each State’s Attorney shall be [...] to defend all actions and proceedings brought against the county, or against any county or State officer, in the county or State officer’s official capacity, within the county.”

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3. In his capacity as an ASA in the Civil Litigation Division, Respondent represented Cook County and various county agencies and boards consistent with the requirements of the Act. Respondent did not have authority to enter into settlement agreements of any kind without authority or approval of his supervisor at the CCSAO. If his supervisors granted Respondent with that authority on a matter, and a settlement agreement was reached, the settlement agreement was submitted to the Cook County Board Litigation Subcommittee for approval. Only upon the Litigation Subcommittee's approval would the Cook County Board authorize payment of a settlement.

4. On or about August 21, 2015, Dr. Mark Krause ("the plaintiff") filed a claim against multiple defendants, including Cook County, in the Circuit Court of Cook County. The clerk of the court assigned the matter docket number 2015L005985, *Mark D. Krause, M.D and Sally Krause v. Cook County Pension Fund; Retirement Board of the County Employees' Annuity and Benefit Fund and Ex Officio for the Forest Preserve District Employees' Annuity and Benefit Fund; and County of Cook*. ("the Krause case") In that complaint, the plaintiff claimed that the County Pension Board had incorrectly determined his pension contributions. The *Krause* case was assigned to Judge Eve Reilly.

5. On February 16, 2016, attorneys for the Cook County Pension Fund and Retirement Board filed a joint motion to dismiss the plaintiff's complaint. On November 10, 2016, the Court entered an order granting the Cook County Pension Fund's and Retirement Board's motion to dismiss with prejudice. Following the court's November 10, 2016 order, Cook County was the lone remaining defendant in the case. On or about May 4, 2016, Respondent's supervisors at the CCSAO assigned Respondent to represent Cook County in the *Krause* case, and thereafter Respondent appeared on the *Krause* case for the first time on behalf of Cook County.

6. On May 4, 2016, Respondent filed the first of a series of motions on behalf of Cook County to dismiss the plaintiff's complaint. Those motions were granted without prejudice, which permitted the plaintiff to file amended complaints. On July 14, 2017, the plaintiff filed his third amended complaint in the *Krause* case. On August 23, 2017, Judge Reilly ordered Cook County to answer the complaint by September 21, 2017, and ordered the parties to issue written discovery by the same date. The plaintiff issued written discovery. Respondent did not.

7. As of January 3, 2018, Respondent had not filed his answer to the complaint on behalf of Cook County and had not responded to any of the plaintiff's written discovery. On January 3, 2018, plaintiff's counsel filed a motion to compel Cook County's answer to the complaint and its response to written discovery. On January 9, 2018, Judge Reilly ordered Respondent to file Cook County's answer and comply with all written discovery by February 9, 2018. Judge Reilly continued the matter to February 21, 2018 for a case management hearing.

8. As of February 21, 2018, Respondent had yet to file his answer on behalf of Cook County or comply with written discovery. Judge Larsen, substituting for Judge Reilly, ordered Cook County to comply with written discovery and answer the complaint by February 28, 2018. Judge Larsen continued the matter to March 8, 2018 for a case management hearing. Prior to March 8, 2018, Respondent filed an answer on behalf of Cook County in the *Krause* case.

9. Between March 8, 2018 and July 18, 2018, the judge presiding over the matter continued the *Krause* case six times, each time ordering Respondent to comply with written discovery and to produce witnesses for depositions which had been scheduled by plaintiff's counsel. As of July 18, 2018, Respondent had yet to comply with written discovery. Respondent appeared in court on neither the June 28, 2018 nor the July 18, 2018 case management hearings. On July 18, 2018, Judge Larsen, substituting for Judge Reilly, ordered Cook County to comply

with written discovery by August 1, 2018, noted that Respondent had failed to appear for the last two case management hearings, and ordered Respondent to appear in court on the following case management hearing date of August 16, 2018. Respondent appeared in court on August 16, 2018, and Judge Larsen continued the matter for October 17, 2018 for status of depositions sought by the plaintiff.

10. As of September 29, 2019, Respondent had failed to comply with the written discovery the plaintiff had previously issued, described in paragraph nine, above. On September 29, 2019, plaintiff's counsel served Respondent with 62 Requests to Admit pursuant to Illinois Supreme Court Rule 216 ("Rule 216"), requesting Cook County's admission of facts pertaining to the plaintiff's allegations in the *Krause* case.

11. Rule 216 permits a party in a lawsuit to serve another party with a written request for the admission by the latter of the truth of any specified relevant fact set forth in the request. Each of the matters of fact of which admission is requested is deemed admitted, unless within 28 days after service of the request, the receiving party, in writing, either denies the matters of fact for which admission is sought, or objects to the request on the grounds of privilege or relevance. Rule 216 further provides a maximum of 30 Requests to Admit that a party is permitted to serve upon another party.

12. The plaintiff's requests to admit included seeking Cook County's admissions of allegations contained in the plaintiff's complaint and necessary elements for the plaintiff to prove his case. Among those requests to admit, the plaintiff sought: that Cook County admit the amount of withholdings from Dr. Krause's gross income; that Cook County determined the amount of retirement contributions withheld from Dr. Krause's gross income; that Cook County failed to timely pay Dr. Krause; that Dr. Krause did not consent to Cook County's return of funds withheld

from his gross wages; that it was reasonable for Dr. Krause to believe that his retirement benefits were not subject to a pension cap; and that Cook County could have structured Dr. Krause's benefits in a way that did not violate the pension cap.

13. Despite Rule 216's requirement that the receiving party provide responses to requests to admit within 28 days of receipt of those requests, Respondent failed to timely respond to the requests to admit or file an objection with the court based on the fact that the number of the plaintiff's requests to admit exceeded the maximum number permitted by Rule 216.

14. Between October 24, 2019 and January 30, 2020, Respondent repeatedly sought extensions of time from the court to respond to the plaintiff's Rule 216 Requests to Admit, all of which were granted. On December 20, 2019, Respondent filed Cook County's first response to the plaintiff's requests to admit. On January 29, 2020, plaintiff's counsel wrote Respondent to state that he objected to the response, alleging that the answers contained in the response failed to comport with Rule 216 because Cook County failed to admit or deny many of the requests to admit. Plaintiff's counsel asked Respondent to submit amended answers to the requests to admit within 14 days.

15. On February 13, 2020, Respondent filed an amended response to the requests to admit. After reviewing Cook County's amended response, plaintiff's counsel again alleged that Respondent, in his amended response, had failed to cure the defects contained in Cook County's original response filed on December 20, 2019, described in paragraph 14, above. On February 24, 2020 plaintiff's counsel filed a motion to compel Cook County's response to the requests to admit in accord with Rule 216.

16. Beginning on or about March 17, 2020, while plaintiff's counsel's motion to compel, described in paragraph 15, above, remained pending, Respondent and plaintiff's counsel

discussed the possibility of settlement. On April 20, 2020, Respondent and plaintiff's counsel agreed to ask Judge Reilly to conduct a settlement conference in the matter.

17. On or about May 13, 2020, the plaintiff and Respondent, on behalf of Cook County, engaged in a settlement conference before Judge Reilly. During that settlement conference, Respondent told plaintiff's counsel and Judge Reilly that he had authority to recommend settlement of the case on behalf of Cook County. At the conclusion of the settlement conference, Judge Reilly recommended that Cook County settle the *Krause* case by paying the plaintiff \$300,000. Respondent agreed to Judge Reilly's settlement recommendation, and Judge Reilly entered an order on the same day stating that the parties had agreed to settle the case for \$300,000. Judge Reilly further ordered Respondent to recommend the settlement through the CCSAO's procedures, and to take the necessary steps to obtain approval of the settlement so that the funds could be paid to the plaintiff. The plaintiff's motion to compel, described in paragraph 15, above, remained pending.

18. Prior to May 13, 2020, Respondent had not notified his supervisors at the CCSAO that he would participate in a settlement conference on the *Krause* case, and had not sought from his supervisors authority to settle the case for any amount on behalf of Cook County.

19. Respondent's statement to plaintiff's counsel and Judge Reilly, described in paragraph 16, above, that he had authority to settle the *Krause* case was false, because Respondent did not have the authority to recommend settlement on behalf of Cook County; rather, CCSAO policy required that Respondent obtain his supervisors' approval before recommending a settlement.

20. Respondent knew his statement described in paragraph 17, above, was false, because, as a result of his experience working in the CCSAO's Litigation Division, Respondent

knew that he was required to obtain his supervisor's approval before entering into any settlement agreement of any amount on behalf of Cook County, and further knew that he was required to obtain the approval of the Civil Actions Bureau Chief before agreeing to a settlement on behalf of Cook County in excess of \$100,000.

21. Between May 13, 2020 and December 15, 2020, Respondent had no conversations with any of his supervisors at the CCSAO or anyone at the Cook County Board regarding the recommended settlement of the *Krause* case, or regarding the fact that he had entered into a settlement conference on the matter.

22. In the months following the May 13, 2020 settlement conference, Respondent repeatedly represented to plaintiff's counsel that the settlement agreement in the *Krause* case would soon be submitted to the Cook County Board's Litigation Subcommittee for approval. On nine separate court dates between June 22, 2020 and February 26, 2021, Respondent and plaintiff submitted agreed orders for continuances which stated that the reason for the continuance was "status on settlement," which related to Respondent's purported attempts to obtain Cook County's approval for the purported agreed-upon \$300,000 settlement of the *Krause* case. At no point did Respondent disclose to his supervisors at the CCSAO or anyone at the Cook County Board that he had agreed to settle the case.

23. On August 25, 2020, Respondent sent an email to plaintiff's counsel stating: "The good news is that the settlement is still in play and trying to get final approval. The remote set up has slowed everything down and there have been a lot of questions and consultation with various people in the County about this entire issue." On September 29, 2020, Respondent sent an email to plaintiff's counsel stating: "This settlement offer will be tendered to the litigation sub-committee

on finance for the County Board for the October 20th board meeting.” On October 30, 2020, Respondent sent an email to plaintiff’s counsel stating:

“Sorry for the delay. This one falls on me. I missed the deadline for getting it submitted. An issue arose internally and some follow up questions needed to be addressed that quite frankly between having to take mandatory furlough time off, and my involvement in some heavy TRO and injunctive matters related to the pandemic. (*sic*) I understand this settlement is taking long, but I believe it’s just technical hurdles that I have to straighten out. My goal is to have this resolved and before the Board for their December meeting.”

24. Respondent’s statements to plaintiff’s counsel described in paragraph 23, above, were false, because Respondent did not have conversations with anyone at the CCSAO or Cook County regarding the settlement of the *Krause* case, and had taken no efforts to submit the agreed-upon settlement to the Cook County Board Litigation Subcommittee.

25. Respondent knew his statements described in paragraph 23, above, were false, because he was the only person at the CCSAO who had knowledge of the settlement agreement in the *Krause* case, knew that he had told no one at the CCSAO or Cook County about the settlement, and knew that he had taken no steps to obtain his supervisors’ approval of the settlement or to submit the purported settlement to the Cook County Board Litigation Subcommittee.

26. On December 15, 2020, Prathima Yeddanapudi, one of Respondent’s supervisors at the CCSAO, sent an email to Respondent inquiring about the status of the *Krause* case. In the email, Ms. Yeddanaputi stated: “Ok, is there anything else I can report on this case? The last status date was set for 2/23/19 and I can’t find anything else.” Respondent replied: “Nothing substantive at this point. Settlement talks with the judge pending.”

27. Respondent’s statement to Ms. Yaddanuputi, described in paragraph 26, above, was false, because the facts of the settlement conference, Judge Reilly’s settlement recommendation, Respondent’s agreement to recommend that settlement, and Respondent’s statements to the

plaintiff's counsel that the purported settlement would be submitted to the Cook County Board Litigation Subcommittee were all substantive events in the *Krause* case.

28. Respondent knew his statement to Ms. Yaddanuputi, described in paragraph 26, above, was false, because at the time he made the statement he had already participated in the settlement conference before Judge Reilly, had agreed to recommend the settlement to the Cook County Board Litigation Subcommittee, had already told plaintiff's counsel that the purported settlement agreement would be presented before the Cook County Board Litigation Subcommittee, and knew that the CCSAO required ASAs in the Civil Action Division to keep their supervisors apprised of all substantive events in an ASA's cases.

29. On or before March 29, 2021, Respondent informed plaintiff's counsel that the County would not settle the case despite the settlement agreement made by Respondent and plaintiff's counsel and recommended by Judge Reilly. Respondent then failed to appear in court on the matter for the next nine status dates: March 29, 2021; June 1, 2021; July 8, 2021; October 18, 2021; November 17, 2021; December 2, 2021; January 21, 2022; February 16, 2022; and March 18, 2022. Respondent failed to notify his supervisors that he would not be present in court on those nine dates, and so for each of those court appearances, Cook County was unrepresented by counsel in court.

30. As of December 2, 2021, Respondent had issued no written discovery to the plaintiff, and had not noticed any depositions for any witnesses in the *Krause* case. On December 2, 2021, Judge Reilly entered an order granting the plaintiff's still-pending motion to compel, described in paragraph 15, above, and closed fact-discovery on the *Krause* case, which had the effect of precluding Cook County from deposing any non-expert witnesses on the *Krause* case and

from issuing any written discovery to the plaintiff. As part of the order, Judge Reilly further deemed admitted 19 of the plaintiff's Requests to Admit, described in paragraphs 10-12, above.

31. Respondent resigned from the Cook County State's Attorney's Office on March 25, 2022, and the Office of the Clerk of the Circuit Court of Cook County hired Respondent as Deputy General Counsel.

32. Throughout the time Respondent was assigned to represent Cook County on the *Krause* case, based on the law, the allegations contained in the plaintiff's complaint, and their belief that they would be able to depose the plaintiff and his witnesses, Respondent's supervisors were confident that Cook County would prevail against the plaintiff at trial if not earlier by way of summary judgment.

33. Upon Respondent's resignation, his supervisors first became aware of the settlement recommendation in the *Krause* case, that Judge Reilly had closed fact-discovery, and that Judge Reilly had deemed admitted allegations of fact against Cook County. Cook County's inability to issue written discovery in the *Krause* case, take necessary depositions of the plaintiff's witnesses, and contest the plaintiff's allegations that were deemed admitted all prevented Cook County from mounting a defense in the *Krause* case.

34. On or about May 12, 2022, following his supervisor's discovery of Respondent's actions in the *Krause* case, the CCSAO appointed outside counsel to replace Respondent on the *Krause* case. On or about June 7, 2022, as a result of the Rule 216 admissions and its inability to conduct discovery of its own, outside counsel for Cook County was compelled to settle the case for \$300,000. The Cook County Board Litigation Subcommittee approved the settlement on September 22, 2022, and Cook County subsequently paid Dr. Krause the settlement sum of \$300,000.

35. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. failing to act with reasonable diligence and promptness in representing a client, by conduct including repeatedly failing to appear in court on behalf of Cook County in the *Krause* case and by neglecting to take steps to gain the Cook County Board's approval of the agreed-upon settlement, in violation of Rule 1.3 of the Illinois Rules of Professional Conduct (2010);
- b. making a false statement of fact to a tribunal, by conduct including stating to Judge Reilly on May 20, 2020, that he had authority to agree to a settlement of the *Krause* case when he knew he did not, in violation of Rule 3.1(a)(1) of the Illinois Rules of Professional Conduct (2010);
- c. failing to make reasonable efforts to expedite litigation consistent with the interests of the client, by conduct including failing to promptly comply with discovery orders in the *Krause* case and by not appearing for multiple court dates on the *Krause* case, in violation of Rule 3.2 of the Illinois Rules of Professional Conduct (2010);
- d. making false statements of material fact to third persons, by conduct including falsely stating to the plaintiff's counsel in the *Krause* case that he had had discussions about the settlement with his supervisors and that he was working to place the settlement before the Cook County Board Litigation Subcommittee for approval, and by falsely stating to his CCSAO supervisor that nothing substantive had taken place in the *Krause* case when he had already agreed to recommend settlement of the case on the County's behalf for \$300,000 following a settlement conference, in violation of Rule 4.1 of the Illinois Rules of Professional Conduct (2010); and

- e. engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, by conduct including falsely stating to the plaintiff's counsel that Respondent had taken action to gain the Cook County Board Litigation Subcommittee's approval of the settlement in the *Krause* case, and by falsely stating to his CCSAO supervisor that nothing substantive had taken place in the *Krause* case, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

Count II

(Failure to Respond to the ARDC's Requests for Information)

36. The Administrator realleges the allegations contained in paragraphs one through 34, above.

37. On August 8, 2022, counsel for the Administrator sent Respondent a request for information relating to the allegations described in paragraphs one through 34, above. In the request, counsel for the Administrator asked Respondent to respond in writing to the allegations within 14 days. The request was sent via email to the personal email address Respondent provided to the Commission as part of his annual registration.

38. As of September 21, 2022, Respondent had not provided a response to the allegations. On that day, counsel for the Administrator sent Respondent another request for information to Respondent's personal email address, seeking the same written response as originally requested on August 8, 2022.

39. As of October 4, 2022, Respondent had not provided a response to the allegations. On that same day, the Administrator issued a subpoena to Respondent requiring him to appear on November 8, 2022 to provide a sworn statement relating to his actions in the *Krause* case. On October 13, 2022, an investigator for the Administrator contacted Respondent by email at his work email address at the Cook County Clerk of Court and asked whether Respondent would accept service of the subpoena via email. On October 17, 2022, Respondent replied to the email from the

Administrator's investigator and agreed to accept service of the subpoena via email. On the same day, the Administrator's investigator sent the subpoena to Respondent via email to Respondent's work email address.

40. On November 7, 2022, Respondent sent an email to the Administrator's investigator asking that the sworn statement be rescheduled due to medical issues he stated pertained to a family member. On the same day, counsel for the Administrator spoke with Respondent on the phone, and subsequently followed up the conversation with an email. Counsel for the Administrator agreed to reschedule the sworn statement but stated that the subpoena remained pending. Respondent replied by email confirming his agreement to provide his written response to the allegations relating to his conduct in the *Krause* case to the Administrator by December 2, 2022.

41. As of December 12, 2022, Respondent had not submitted his written response to the allegations pertaining to his actions in the *Krause* case. On that date, counsel for the Administrator sent Respondent an email asking Respondent when he planned to submit his written response. Respondent did not reply to that email.

42. On June 15, 2023, counsel for the Administrator again emailed Respondent at both his personal and work email address and asked him to provide dates for his sworn statement pertaining to his conduct in the *Krause* case. Respondent did not reply to that email. As of June 20, 2023, Respondent had not provided his written response to the allegations pertaining to his conduct in the *Krause* case, had not sought any extensions of time to do so, and has not appeared for his sworn statement. Respondent's appearance in response to the October 4, 2022 subpoena has never been waived or excused.

43. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. knowingly failing to respond to a lawful demand for information from an admissions or disciplinary authority, by conduct including failing to respond to the ARDC's repeated requests for information relating to his conduct in the *Krause* case, in violation of Rule 8.1(b) of the Illinois Rules of Professional Conduct (2010).

WHEREFORE, the Administrator requests that this matter be assigned to a panel of the Hearing Board, that a hearing be held, and that the panel make findings of fact, conclusions of fact and law, and a recommendation for such discipline as is warranted.

Respectfully Submitted,

Jerome Larkin, Administrator
Attorney Registration and
Disciplinary Commission

By: /s/ Richard Gleason
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