

*People v. Alexander*. 10PDJ104. April 15, 2011. Attorney Regulation. Following a sanctions hearing, the Presiding Disciplinary Judge suspended for two years William A. Alexander, Jr., (Attorney Registration Number 09610), effective May 16, 2011. In two worker's compensation matters, Respondent neglected his clients' cases, which ultimately precluded his clients from pursuing their legal claims. In addition, he assured one client for almost a year that he had filed an appeal with the court of appeals when he had not. Respondent compounded this deceit by producing to the People, during the course of their investigation, a falsified letter in order to conceal his misrepresentation. His misconduct constitutes grounds for the imposition of discipline pursuant to C.R.C.P. 251.5 and violated Colo. RPC 1.1, 1.3, 1.4(a), 3.4(c), 3.4(d), 8.4(c), and 8.4(d).

SUPREME COURT, STATE OF COLORADO  ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1560 BROADWAY, SUITE 675 DENVER, CO 80202	
<b>Complainant:</b> THE PEOPLE OF THE STATE OF COLORADO  <b>Respondent:</b> WILLIAM A. ALEXANDER, JR.	Case Number: <b>10PDJ104</b>
<b>DECISION AND ORDER IMPOSING SANCTIONS          PURSUANT TO C.R.C.P. 251.19(c)</b>	

On March 24, 2011, the Presiding Disciplinary Judge (“the Court”) held a sanctions hearing pursuant to C.R.C.P. 251.18(b). Adam J. Espinosa appeared on behalf of the Office of Attorney Regulation Counsel (“the People”). William A. Alexander, Jr. (“Respondent”) did not appear, nor did counsel appear on his behalf. The Court now issues the following “Decision and Order Imposing Sanctions Pursuant to C.R.C.P. 251.19(c).”

### **I. SUMMARY**

In two worker’s compensation matters, Respondent neglected his clients’ cases, which ultimately foreclosed his clients from pursuing their legal claims. In addition, for almost a year, he assured one client that he had filed an appeal with the court of appeals when he had not. Respondent compounded this deceit by producing to the People, during the course of their investigation, a falsified letter in order to conceal his misrepresentation. Respondent has not participated in the disciplinary proceedings brought against him, and the Court is unaware of significant factors that would mitigate his conduct. Accordingly, the Court concludes Respondent’s neglect, lack of communication, and deceit warrant a two-year suspension.

### **II. PROCEDURAL HISTORY**

On September 24, 2010, the People filed a citation and complaint in this matter and sent copies via certified mail and regular mail to Respondent at his registered business address of 3055 Austin Bluffs Parkway, Suite B, Colorado Springs, CO 80918. The People filed a “Proof of Service of Citation and Complaint” on September 30, 2010. The People thereafter sent Respondent a

reminder letter on October 26, 2010, but Respondent did not file an answer to the complaint.

On November 12, 2010, the People filed a motion for default against Respondent, who did not file a response. Accordingly, on January 6, 2011, the Court entered an order of default against Respondent pursuant to C.R.C.P. 251.15(b). In that order the Court determined the complaint met the requirements of C.R.C.P. 251.14(a) and thus found that the facts and rule violations contained in the complaint had been established.<sup>1</sup>

### **III. ESTABLISHED FACTS AND RULE VIOLATIONS**

The Court hereby adopts and incorporates by reference the factual background of this case as detailed in the admitted complaint. Respondent took and subscribed to the oath of admission and gained admission to the bar of the Colorado Supreme Court on October 9, 1979. He is registered upon the official records under attorney registration number 09610 and is therefore subject to the jurisdiction of the Court pursuant to C.R.C.P. 251.1.

#### **The Strombitski Matter**

Carl Strombitski (“Strombitski”) hired Respondent in 1999 to represent him in a worker’s compensation matter. At that time, Respondent successfully obtained for Strombitski worker’s compensation benefits.

Strombitski later moved to Iowa. While he was there, he communicated with Respondent, complaining about his worsening pain. Strombitski returned to Colorado in 2008, and Respondent advised him to see a doctor, who opined that Strombitski’s medical condition had worsened, with no intervening injury. Accordingly, Respondent filed a petition to reopen Strombitski’s worker’s compensation case.

On June 11, 2008, an administrative law judge denied Strombitski’s petition to reopen the case. On July 1, 2008, Respondent appealed the denial by filing a two-sentence petition with the Industrial Claims Appeals Office (“ICAO”). Respondent was given until July 29, 2008, to file a brief in support of his appeal, but on that day, he requested additional time to file a brief. ICAO granted Respondent additional time, but Respondent never filed a legal brief in support of the appeal or provided ICAO with any legal authority or facts to support the appeal. On October 8, 2008, ICAO affirmed the decision of the administrative law judge, denying Respondent’s appeal.

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<sup>1</sup> Upon the entry of default, the Court deems all facts set forth in the complaint admitted and all rule violations established by clear and convincing evidence. See *People v. Richards*, 748 P.2d 341, 346 (Colo. 1987); C.R.C.P. 251.15(b).

Following the ICAP decision, Respondent told Strombitski that he would file an appeal with the Colorado court of appeals. In May 2009, Strombitski began calling Respondent approximately twice a month to inquire when he might expect a decision on the appeal. Respondent assured Strombitski that the judgment was forthcoming and advised him to be patient. Occasionally, Strombitski would speak with Respondent's paralegal, Morgan Chase ("Chase"), who was unable to give him information about the appeal and who told Strombitski he would need to talk to Respondent about the matter.

During this time, Strombitski and his wife met with Respondent at a local restaurant to discuss the appeal and a possible bad faith case against the worker's compensation insurer. At the meeting, Strombitski asked again about the status of the appeal, and Respondent recommended that Strombitski check the court of appeals' website every Thursday for the opinion. As Respondent suggested, Strombitski's wife checked the website every Thursday, but a decision never appeared.

Strombitski subsequently called Respondent again about the appeal, and Respondent pledged to follow up with the court. In July 2009, Respondent told Strombitski that his contact at the court of appeals stated the judgment would be available within a week or two. But by October 2009, the decision still had not appeared on the website. Strombitski called Respondent to ask about the delay, and Respondent said he would write a letter to the chief judge of the Colorado court of appeals, inquiring about the appeal's status.

Later in October 2009, however, Strombitski called the Court of Appeals directly, only to learn that an appeal had never been filed. Strombitski immediately called Respondent, who told him there must have been an error in filing, vowing to look into the matter. Concerned, Strombitski then called Respondent's office again and spoke with Chase, who told him that after reviewing the file it was clear Respondent had never filed an appeal.

In connection with the People's investigation of Strombitski's complaint, Respondent claimed he notified Strombitski early on that he would not file an appeal. In support, Respondent provided to the People a letter dated October 17, 2008, in which he ostensibly informed Strombitski that there was no basis for a viable appeal. Strombitski, however, never received the letter. Indeed, Respondent created the letter after the fact for purposes of responding to the People's investigation.

While Strombitski waited for a decision on the appeal, he also conferred with Respondent about the possibility of pursuing a bad faith claim related to his worker's compensation case. Respondent told Strombitski that he could not work on the claim because he would be a witness. As such, Respondent told Strombitski in the summer of 2008 that an attorney named Jeffrey Hill ("Hill") would handle the bad faith claim.

Strombitski was eager to begin the process and meet Hill. Despite repeated attempts to arrange a meeting with Respondent and Hill, however, such a meeting could never be scheduled. Respondent continually provided Strombitski excuses as to why a meeting could not happen. Finally, Strombitski called Hill, who told Strombitski that he had never heard of him or his bad faith case. Ultimately, neither Respondent nor Hill pursued the bad faith case, and the statute of limitations on Strombitski's claim lapsed.

Through his mishandling of Strombitski's case, Respondent violated several rules of professional conduct. Respondent violated Colo. RPC 1.1 by failing to provide Strombitski competent legal representation, insofar as he never filed with ICAO any legal authority or facts to support Strombitski's appeal. Respondent also violated Colo. RPC 1.3, which mandates attorneys act with reasonable diligence and promptness in representing a client. Respondent did not act with reasonable diligence when he failed to file legal authority with ICAO, failed to submit a brief to the court of appeals, and failed to follow up on Strombitski's bad faith claim.

Further, Respondent violated Colo. RPC 1.4(a), which obligates lawyers to communicate reasonably with their clients. Respondent failed to keep Strombitski reasonably informed about the status of his appeal or his bad faith case, and he failed to comply with Strombitski's reasonable requests for information concerning both matters. Finally, Respondent violated Colo. RPC 8.4(c), which forbids attorneys from engaging in conduct involving dishonesty, deceit, or misrepresentation. Respondent misrepresented to Strombitski that he had filed an appeal with the court of appeals, even though he had not, and he dishonestly created, after the fact, a letter dated October 17, 2008, for the purpose of misleading the People.

### **The Nunez Matter**

Shawn Nunez ("Nunez") hired Respondent to represent him in a worker's compensation matter involving a work injury Nunez sustained on October 16, 2003. On December 5, 2003, Respondent filed a worker's compensation claim against Payless Shoes & Pacific Employers ("Payless") on Nunez's behalf. Payless filed a final admission of liability in the case on October 14, 2004, admitting 15% whole person impairment rating. Respondent then filed an application for a hearing on October 22, 2004, and a hearing was set for February 2, 2005. The hearing did not take place, yet Respondent took no further action on the claim.

On October 24, 2005, Payless filed a motion to close due to non-prosecution of the case. Respondent did not respond to this motion, nor did he file a response to the tribunal's order to show cause why the case should not be dismissed for failure to prosecute. The claim closed automatically on

December 19, 2005. On July 26, 2006, Respondent filed a motion to withdraw as counsel, which was granted on August 10, 2006.

On December 13, 2007, Respondent filed an application for hearing endorsing penalties for Payless for its alleged failure to exchange medical records on a timely basis. Respondent did not set this matter for hearing. Instead, Respondent filed a second application for a hearing on March 26, 2008. The hearing was set for July 16, 2008.

On March 28, 2008, Payless sent interrogatories and releases to Respondent for Nunez to answer and sign. Respondent forwarded the releases to Nunez on April 1, 2008, along with a letter asking him to sign the releases and have them notarized, and to send responses to the interrogatories. Nunez did not sign the releases or provide answers to the interrogatories, so Payless filed a motion to compel Nunez to answer the interrogatories. Respondent, failed to respond to the motion, however, and it was therefore granted on June 20, 2008.

Between June 20, 2008, and December 17, 2008, Respondent did not provide any executed releases or interrogatory responses to Payless. Nor did he contact Nunez about the releases or interrogatories during that time. Thus, on December 17, 2008, Payless's counsel, Christian Williams ("Williams"), sent Respondent a letter again requesting the releases and interrogatory responses. Respondent did not respond to Williams's letter, and he did not contact Nunez to attempt to obtain the requested documents.

On January 13, 2009, Payless filed a motion to dismiss with prejudice based on Respondent's failure to respond to the order compelling discovery. Respondent did not respond to the motion, send a copy of the motion to Nunez, or take any other action. As a result, the court granted Payless's motion to dismiss on January 27, 2009. Respondent did not appeal this order or otherwise take any prompt action in response.

Almost a year later, on December 11, 2009, Respondent filed an application for hearing that endorsed the issue of medical benefits. A hearing was scheduled for March 19, 2010. On January 5, 2010, Payless filed a response, and on February 16, 2010, it followed up with a motion for summary judgment, arguing that the application for hearing was barred by the statute of limitations because the application was filed more than six years after the date of the injury. Payless also sought attorney's fees from Nunez because Respondent filed the December 11, 2009, application for hearing on issues that were allegedly not ripe and barred by the statute of limitations. Respondent did not respond to the motion for summary judgment or provide a copy of that motion to Nunez.

On February 17, 2010, Respondent filed a motion to withdraw from the case. The court permitted Respondent to withdraw on March 4, 2010, two weeks before the hearing was scheduled. On March 31, 2010, the court issued an order granting the motion for summary judgment, vacating the hearing, and assessing against Nunez \$2,025.00 in attorney's fees and costs, payable to Payless. Nunez is now barred from reopening his claim.

Respondent violated Colo. RPC 1.1 in Nunez's matter by failing to provide competent legal representation: he failed to respond to Payless's motion to close due to non-prosecution, its motion to compel Nunez to answer interrogatories, its motion to dismiss, and its motion for summary judgment. By failing to act with reasonable diligence and promptness in these matters, and thus neglecting Nunez's interests, Respondent also violated Colo. RPC 1.3. Further, Respondent violated Colo. RPC 1.4(a) by failing to honor his duty to communicate; he failed to keep Nunez reasonably informed about the status of his case and failed to notify Nunez that various motions to dispose of the case had been filed.

Respondent also acted in violation of Colo. RPC 3.4(c), which provides that a lawyer shall not knowingly disobey an obligation under the rules of a tribunal. Respondent disobeyed the court order compelling him to answer Payless's interrogatories, despite his knowledge of the order. Likewise, he violated Colo. RPC 3.4(d) by failing to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party.

Finally, Respondent engaged in conduct prejudicial to the administration of justice in violation of Colo. RPC 8.4(d). He failed to comply with a court order compelling responses to interrogatories and production of releases, causing delay in the case and injury to his client. He also failed to respond to the court's November 17, 2005, show cause order.

#### **IV. SANCTIONS**

The American Bar Association *Standards for Imposing Lawyer Sanctions* (1991 & Supp. 1992) ("ABA Standards") and Colorado Supreme Court case law govern the selection and imposition of sanctions for lawyer misconduct. ABA *Standard* 3.0 mandates that, in selecting the appropriate sanction, the Hearing Board must consider the duty breached, Respondent's mental state, the injury or potential injury caused, and the aggravating and mitigating evidence.

##### ***ABA Standard 3.0 – Duty, Mental State, and Injury***

Duty: By neglecting legal matters and failing to communicate with Strombitski and Nunez, Respondent violated his duties to his clients. By dishonestly providing a falsified document to the People and then failing to

cooperate or participate in the People's investigation of these matters, Respondent violated his duties to the profession and the legal system.

*Mental State:* The Court's order of default establishes that Respondent knowingly failed to communicate with his clients, knowingly failed to act with reasonable diligence and promptness, knowingly disobeyed a court order compelling discovery responses, knowingly acted dishonestly by representing to Strombitski that he filed an appeal when he had not, and knowingly acted dishonestly by providing a falsified document to the People.

*Injury:* By failing to provide competent and diligent representation to his clients and by making misrepresentations to Strombitski, Respondent's misconduct occasioned financial, legal, and emotional harm. Respondent's neglect denied his clients a fair chance to resolve their cases as efficiently and as effectively as possible. In addition, Respondent caused injury to the legal and disciplinary systems by submitting a falsified document during the course of the People's investigation.

In Strombitski's case, Respondent's neglect resulted in the statute of limitations barring recovery in Strombitski's worker's compensation matter. This caused Strombitski a "great deal of harm," since his medical treatments and pain treatments were discontinued as a result. He was "cut off from those benefits," which "put great stress on me and my family over the years." He now apperceives lawyers negatively; prior to retaining Respondent, he pictured lawyers as "straightforward, by the book," but Respondent upended that perception. Strombitski implored the Court to impose the stiffest sanction possible.

Respondent's neglect also resulted in the dismissal of Nunez's case, which was then ultimately barred by the statute of limitations. Following Respondent's withdrawal from Nunez's case, Nunez was ordered to pay over \$2,000.00 in opposing counsel's attorney's fees. He was also forced to file for indigent health care once his recourse to worker's compensation benefits had been foreclosed. Nunez testified that he has suffered "absolute mental stress and anguish" due to his involvement with Respondent, which has "absolutely" changed his opinion of the legal profession. He testified, "Let's just say I don't want to hire [an attorney] ever again. I absolutely have no faith at all, zero."

### ***ABA Standard 3.0 – Aggravating and Mitigating Factors***

Aggravating circumstances are any factors that may justify an increase in the degree of discipline to be imposed. Mitigating circumstances are any factors that may justify a decrease in the degree of discipline to be imposed. The Court considers evidence of the following aggravating and mitigating circumstances in deciding the appropriate sanction.

Dishonest or Selfish Motive – 9.22(b): Respondent acted with a dishonest and selfish motive when, in an attempt to exculpate himself, he falsified and produced during the course of the People’s investigation a letter designed to conceal his misconduct.

Pattern of Misconduct – 9.22(c): Respondent repeatedly failed to respond to client requests for information in two cases over a period of years.

Multiple Offenses – 9.22(d): Respondent violated Colo. RPC 1.1, 1.3, 1.4(a), 3.4(c), 3.4(d), 8.4(c), and 8.4(d).

Submission of False Evidence, False Statements, or Other Deceptive Practices During the Disciplinary Process – 9.22(f): Respondent produced a falsified document during the People’s investigation in an attempt to exculpate himself.

Substantial Experience in the Practice of Law – 9.22(i): Respondent was admitted to the Colorado bar in 1979 and has thus enjoyed substantial experience in the practice of law.

Absence of Prior Disciplinary Record – 9.32(a): The Court considers Respondent’s lack of disciplinary history a factor in mitigation.

### **Sanctions Analysis Under ABA Standards and Case Law**

In determining the appropriate sanction in this case, the Court looks to ABA Standards 4.42 and 4.62. ABA Standard 4.42 provides that suspension is appropriate when a lawyer knowingly fails to perform services for a client and thereby causes injury or potential injury. ABA Standard 4.42 also encompasses circumstances in which lawyers do not reasonably communicate with their clients. Likewise, ABA Standard 4.62 calls for suspension when a lawyer knowingly deceives a client and causes injury or potential injury as a result. The Court also takes heed that in cases of multiple instances of misconduct, such as the one here, the ABA Standards direct that the sanction imposed “should at least be consistent with the sanction for the most serious instance of misconduct . . . ; it might well be and generally should be greater than the sanction for the most serious misconduct.”<sup>2</sup>

In general, recent Colorado case law holds that a significant period of suspension is warranted where an attorney engages in multiple instances of neglect and failure to communicate. For instance, *People v. Rishel* supports a substantial suspension.<sup>3</sup> In that case, a lawyer who defaulted in his disciplinary proceedings was suspended for a year and a day for seriously neglecting two client matters by moving his practice out of state without

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<sup>2</sup> ABA Standards § II at 7.

<sup>3</sup> 956 P.2d 542 (Colo. 1998).

warning.<sup>4</sup> *People v. C de Baca* is also comparable to the instant case.<sup>5</sup> There, an attorney who defaulted in a disciplinary proceeding was found to have neglected two legal matters and failed to notify a client he had been suspended from the practice of law.<sup>6</sup> In light of significant aggravation, including Respondent's deception during the disciplinary process, the Colorado Supreme Court approved a two-year suspension.<sup>7</sup> Likewise, *People v. Lloyd* is analogous to the matter at hand; there, a lawyer was suspended for a year and a day after two instances of neglect, including one instance in which a court dismissed the matter for lack of prosecution, leading to the expiration of the statute of limitations.<sup>8</sup> Finally, *People v. Hall*, where an attorney neglected three client matters and lied to one client about the progress of his case, is instructive in this matter.<sup>9</sup> In *Hall*, a two-year suspension was deemed appropriate.<sup>10</sup>

This precedent establishes that a suspension lasting between one year and one day and two years is well-supported. But here, the presence of numerous aggravating factors convinces the Court that a suspension at the upper end of this range is fitting. Respondent's attempt to mislead the People during the course of their investigation is particularly egregious and warrants a "serious sanction," since licensed attorneys should be truthful with the People at all times.<sup>11</sup> Indeed, the Colorado Supreme Court has regularly imposed more severe discipline when attorneys have intentionally deceived the People's investigators in order to conceal their misconduct.<sup>12</sup> Thus, the Court

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<sup>4</sup> *Id.* at 543-44.

<sup>5</sup> 948 P.2d 1 (Colo. 1997).

<sup>6</sup> *Id.* at 2-3.

<sup>7</sup> *Id.* at 3-4.

<sup>8</sup> 696 P.2d 249, 250-51 (Colo. 1985).

<sup>9</sup> 810 P.2d 1069, 1069-70 (Colo. 1991).

<sup>10</sup> *Id.* at 1070-71; *see also People v. Davies*, 926 P.2d 572, 573 (Colo. 1996) (suspending lawyer with previous discipline for a year and a day for violating Colo. RPC 1.1 by incorrectly calculating client's child support and by failing to respond to the People's requests for information); *People v. Regan*, 831 P.2d 893, 896 (Colo. 1992) (imposing suspension of one year and one day where attorney engaged in pattern of neglect and lack of communication, and where significant mitigation was present); *People v. Eaton*, 828 P.2d 246, 247-48 (Colo. 1992) (suspending lawyer for one year and one day for neglecting three client matters and deceiving clients about work she performed, but where substantial mitigation existed, including the absence of a history of discipline and the presence of significant mental disability); *People v. Convery*, 758 P.2d 1338, 1340 (Colo. 1988) (suspending lawyer for one year and one day for filing frivolous motion, failing to respond to interrogatories, failing to take action on case, leading to garnishment of client's bank account, and failing to inform client of a deposition, causing court to order sale of client's property); *People v. Madrid*, 700 P.2d 558, 559-60 (Colo. 1985) (suspending lawyer for one year and one day for neglecting to contact witnesses, file motions, subpoena witnesses in preparation for trial, and respond to client).

<sup>11</sup> *People v. White*, 935 P.2d 20, 22 (Colo. 1997) (making false statements to the the People during the investigation of the case constitutes an aggravating factor, as well as "a violation of uncharged misconduct under R.P.C. 8.1").

<sup>12</sup> *See, e.g., People v. Barnthouse*, 948 P.2d 534, 538 (Colo. 1997) (finding longer period of suspension appropriate because of aggravating factors, "especially the respondent's prior history and his submission of false evidence in this proceeding"); *White*, 935 P.2d at 22 (imposing suspension, rather than public censure, due to attorney's false statements to

concludes Respondent should be suspended from the practice of law for a period of two years.

As a final matter, the People suggest the Court may order Respondent to pay Nunez restitution of over \$2,000.00 in compensation for the attorney's fees awarded against him in the Payless matter. Although the Court is sympathetic to Nunez's plight, it cannot find support in the case law for the People's request. An order of restitution is, in general, only proper when a loss is proximately caused by the respondent's conduct.<sup>13</sup> Here, there is insufficient evidence before the Court that Respondent's misconduct was the proximate cause of the attorney's fee award in that case. *In re Scott* informs the Court's decision; there, the Colorado Supreme Court rejected a hearing board's order of \$221,000.00 in restitution against an attorney who neglected his client's case, resulting in the entry of a default judgment.<sup>14</sup> The Court held that "[w]hile the entry of the *default* judgment against [the client] was undoubtedly caused by Scott's neglect, it is neither appropriate nor possible in this proceeding to determine what part of [the client's] damages was actually caused by that neglect."<sup>15</sup> So too, here: the Court cannot ascertain what part of the attorney's fee award against Nunez is attributable to Respondent's misconduct, as opposed to those parts awarded pursuant to statute or for some other cause. As such, the Court is unable to grant an order for restitution.

## V. CONCLUSION

Respondent's conduct in the Strombitski and Nunez matters flouted the fundamental professional duties of diligence, communication, and honesty Respondent owed to those clients. His neglect in these cases—exacerbated by his outright deceit in the Strombitski matter—contributed to both clients' inability to seek relief regarding their worker's compensation claims and discredited, in their eyes, the entire legal profession. In light of the serious nature of Respondent's misconduct, particularly his knowing attempt to deceive the People during their investigation, the Court concludes Respondent should be suspended for two years.

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disciplinary investigators); *People v. Glaess*, 884 P.2d 722, 724 (Colo. 1994) (distinguishing matter from thirty-day suspension based on attorney's "repeated misrepresentations about the filing of the action and fictitious court dates" and imposing ninety-day suspension); *People v. Gaimara*, 810 P.2d 1076, 1079 (Colo. 1991) (finding thirty-day suspension too lenient and imposing six-month suspension on account of attorney's intentional misrepresentations to his client and the grievance committee).

<sup>13</sup> *People v. Leonard*, 167 P.3d 178, 181 (Colo. App. 2007).

<sup>14</sup> 979 P.2d 572, 574 (Colo. 1999).

<sup>15</sup> *Id.*



Susan Festag  
Colorado Supreme Court

Via Hand Delivery