CONNECTICUT FREEDOM OF INFORMATION COMMISSION

ACLU Foundation of Connecticut,
Petitioner

v. Nos. 2016-0791,
2016-0840

Town of Enfield,
Respondent

ACLU Foundation's Post-Hearing Brief

When four civil rights lawsuits were filed against the Town of Enfield, it hired lawyers who appeared in those cases and eventually settled them for their client. The ACLU Foundation of Connecticut later requested copies of the documents resolving those cases, but Enfield claimed that it did not have the documents because they are physically stored at its lawyers' office, and that it could not ask its lawyers for them. Because principles of agency law, as well as the Rules of Professional Conduct, squarely place the documents within Enfield's control, the town must be ordered to obtain the records from its lawyers and give them to the Foundation.

1. Facts

In 2014 and 2015, four people sued the Town of Enfield for the behavior of Enfield police employee Matthew Worden. Eric Avalos and Zachary Trowbridge each filed such a suit in the United States District Court for the District of Connecticut,[1] while Ronnie Salas and his brother Frank each filed their own suits in the Connecticut Superior Court that were removed to federal court by the defendants[2] and consolidated

1 Complaint, *Avalos v. Town of Enfield*, No. 15-cv-902 (D. Conn. June 11, 2015) (petitioner's Exhibit A in Commission docket number 2016-791); Third Amended Complaint, *Trowbridge v. Town of Enfield*, No. 15-cv-688 (D. Conn. July 24, 2015) (petitioner's Exhibit A in Commission docket number 2016-840).

2 Complaint, *Ronnie Salas v. Town of Enfield*, No. 14-cv-1895 (D. Conn. Dec. 17, 2014) (petitioner's Exhibit E in Commission docket number 2016-791); Complaint, *Frank Salas v. Town of Enfield*, No.

into a single action.[3] Lawyers appeared on Enfield's behalf in each of those suits.[4] Enfield settled those cases, and its counsel stipulated to dismissal of the cases.[5] *See* Fed. R. Civ. P. 41(a)(1)(A)(ii) (permitting a plaintiff to dismiss an action after an answer absent court approval only upon agreement of all the parties). The Enfield selectboard approved the resolution of each case.[6]

In October 2016, the ACLU Foundation of Connecticut requested all documents resolving the Avalos and Salas suits against Enfield.[7] Enfield town manager Bryan Chodkowski denied the request, claiming that "[t]he Town does not have the requested documents," and referring the Foundation to "James Tallberg, the attorney assigned to these cases" by the town's insurance carrier.[8]

In November 2016, the Foundation requested all documents resolving the Trowbridge litigation.[9] An employee in the town clerk's office responded and explained

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14-cv-1883 (D. Conn. Dec. 16, 2014) (petitioner's exhibit G in Commission docket number 2016-791).

3 Order granting motion to consolidate cases, *Salas v. Town of Enfield*, No. 14-cv-1883 (D. Conn. Feb. 18, 2015) (petitioner's Exhibit H in Commission docket number 2016-791).

4 James Tallberg notice of appearance, *Avalos v. Town of Enfield*, No. 15-cv-902 (D. Conn. June 22, 2015) (petitioner's Exhibit B in Commission docket number 2016-791); Patrick Allen notice of appearance, *Avalos v. Town of Enfield*, No. 15-cv-902 (D. Conn. Aug. 14, 2015) (petitioner's Exhibit C in Commission docket number 2016-791); Patrick Allen notice of appearance, *Ronnie Salas v. Town of Enfield*, No. 14-cv-1895 (D. Conn. Dec. 30, 2014) (petitioner's Exhibit F in Commission docket number 2016-791); James Tallberg notice of appearance, *Trowbridge v. Town of Enfield*, No. 15-cv-688 (D. Conn. May 19, 2015) (petitioner's Exhibit B to Commission docket number 2016-840); Patrick Allen notice of appearance, *Trowbridge v. Town of Enfield*, No. 15-cv-688 (D. Conn. June 18, 2015) (petitioner's Exhibit C to Commission docket number 2016-840).

5 Order dismissing case, *Salas v. Town of Enfield*, No. 14-cv-1883 (D. Conn. Sep. 26, 2016) ("The parties have reported that this action has been settled in full.") (petitioner's Exhibit I to Commission docket number 2016-791); Stipulation of dismissal, *Salas v. Town of Enfield*, No. 14-cv-1883 (D. Conn. Nov. 16, 2016) (petitioner's Exhibit J to Commission docket number 2016-791); Stipulation of dismissal, *Avalos v. Town of Enfield*, No. 15-cv-902 (D. Conn. Nov. 16, 2016) (petitioner's Exhibit D to Commission docket number 2016-791); Stipulation of dismissal, *Trowbridge v. Town of Enfield*, No. 15-cv-688 (D. Conn. Jan. 19, 2017) (petitioner's Exhibit D to Commission docket number 2016-840).

6 *See* Mikaela Porter, Enfield Council Settles Two More Police Brutality Lawsuits, Hartford Courant, Oct. 3, 2016 (petitioner's Exhibit K to Commission docket number 2016-791) (reporting town council's approval of the Avalos and Salas settlements); Mikaela Porter, Enfield Settles Fourth Police Brutality Lawsuit in Three Months, Hartford Courant, Nov. 15, 2016 (petitioner's Exhibit I to Commission docket number 2016-840) (reporting town council approval of Trowbridge settlement).

7 Letter from Dan Barrett to Bryan Chodkowski (Oct. 4, 2016) (petitioner's Exhibit L to Commission docket number 2016-791).

8 Letter from Christopher Bromson to Dan Barrett (Oct. 14, 2016) (petitioner's Exhibit M to Commission docket number 2016-791).

9 Letter from Dan Barrett to Bryan Chodkowski (Nov. 16, 2016) (petitioner's Exhibit E to Commission

that the town attorney's office fields requests for litigation records.[10] The Foundation sent a renewed request to the town attorney,[11] who denied the request shortly thereafter on the basis that "[t]he Town does not have the requested documents."[12] The Foundation timely contested the two denials, and the Commission set both down for a consolidated hearing on March 28, 2017.

Testifying at that hearing, Mr. Chodkowski explained that he himself had neither searched for any responsive records nor drafted the denial letter he signed; those tasks were performed by the town attorney's office. For his part, Enfield town attorney Christopher Bromson testified that he believed that the town's lawyer in all four suits, James Tallberg, possessed the agreements resolving the four cases. Bromson also testified that he did not ask Tallberg for copies of the agreements.

Enfield stipulated at the hearing that the town's sole basis for denying the Foundation's requests is its claim that it lacks possession of the requested records. Enfield does not contend that any Freedom of Information Act exemption is at issue, and does not claim that any contractual provision in the agreements sought by the Foundation permit withholding.

2. The Settlement Resolution Documents are Public Records Because the Town Has Legal Control Over Them

Connecticut's open records law mandates unimpeded copying or inspection of "public records." Conn. Gen. Stat. § 1-210(a). The term "public records" encompasses

docket number 2016-840).

10 Email from Maya Matthews to Dan Barrett (Nov. 17, 2016) (petitioner's Exhibit F to Commission docket number 2016-840).

11 Letter from Dan Barrett to Christopher Bromson (Nov. 18, 2016) (petitioner's Exhibit G to Commission docket number 2016-840).

12 Letter from Christopher Bromson to Dan Barrett (Nov. 29, 2016) (petitioner's Exhibit H to Commission docket number 2016-840).

not just records "retained by a public agency," but also includes data "prepared, owned, [or] used" by an agency. *Id.* § 1-200(5). And, the statute expressly contemplates access to records under the legal control of, but not physically possessed by, a public agency. When denying access to records, such denial must be made in writing by "the public agency official who has custody *or control* of the public record." *Id.* § 1-206(a) (emphasis added). In this dispute, the Town of Enfield contends that it has no control over records physically held by its lawyer. Two sources of law belie that contention.

2.1 The Town's Attorneys Acted as Enfield's Agents When Litigating and Settling the Four Cases, and Enfield is Entitled to Information About the Agents' Conduct of Its Business

First, the law of agency dictates that agreements to resolve litigation that were negotiated and executed by the lawyer Enfield hired are as good as having been done by Enfield directly. As such, Enfield is entitled to copies of the records.

The same rules applying to agents and principals "apply to the relationship between attorneys and their clients." *Ackerman v. Sobol Family P'ship, LLP*, 298 Conn. 495, 509 (2010). Hence, our supreme court analyzes disputes over an attorney's ability to consummate a settlement on behalf of a client by reference to agency law, the Restatement of Agency, and the Restatement of the Law Governing Lawyers. *See id.* 510 (discussing the apparent authority of lawyers and adopting both Restatements "as authoritative support"). Under that law, a lawyer's actions taken on behalf of a client are as good as the client's having acted directly. *See Monroe v. Monroe*, 177 Conn. 173, 181 (1979) ("It is hornbook law that clients generally are bound by the acts of their attorneys.").

Both Restatements require the agent-attorney to furnish his principal-client with

information on request. An agent must "give his principal information which is relevant to affairs entrusted to him and which, as the agent has notice, the principal would desire to have." Restatement (Second) of Agency § 381. And, a lawyer "must allow a client or former client to inspect and copy any document possessed by the lawyer relating to the representation . . .." Restatement (Third) of the Law Governing Lawyers § 46(2).

Appellate courts in other states have applied precisely this analysis to open records disputes in which a public agency claims not to control documents held by a third party working for it in litigation. Pennsylvania's high court held that a housing authority's insurer "stood in the shoes" of the authority when it defended litigation against the authority, and "functioned as its agent," citing the Restatement of Agency. *Tribune-Review Publ'g Co. v. Westmoreland County Housing Auth.*, 833 A.2d 112, 119-120 (Pa. 2003). "If the preparation of a . . . litigation settlement document . . . by an attorney-in-fact for the agency's insurer is not viewed as preparation by the agency," the court reasoned, "any public entity could thwart disclosure . . . by having . . . an insurer's attorney prepare every writing that the public entity wishes to keep confidential." *Id.* at 118. The court therefore affirmed a trial court order that the housing authority obtain a copy of the settlement document and produce it to the requester. *Id.* at 115, 121.

New Jersey's intermediate appellate court has held the same. In *Burnett v. County of Gloucester*, the public agency refused to produce records in the physical possession of its insurer and insurance defense counsel, claiming that it need not search outside of county offices. 2 A.3d 1110, 1117 (N.J. Super. Ct. App. Div. 2010). The appeals court disagreed, explaining that settlement agreements entered into on behalf of the county by an insurer or by counsel "were 'made' by or on behalf of the [county board] in the course of its official business," and hence, were public records. *Id.*

(reversing contrary trial court order, and warning that the opposite conclusion would cause public agencies to "delegate [document] creation to third parties or relinquish possession to such parties, thereby thwarting" the open records act).

Indiana has reached the same conclusion. In that state, a lawyer retained by a public agency, who "create[s], maintain[s], and retain[s] custody of" a settlement agreement resolving litigation against the agency, has created a public record by acting on behalf of the agency. *Knightstown Banner v. Town of Knightstown*, 838 N.E.2d 1127, 1133 (Ind. Ct. App. 2005) (remanding for trial court to order public agency to fetch a copy of a settlement agreement from outside counsel and deliver it to requester).

As has Wisconsin, whose mid-level appellate court explained that, because "[a] lawyer retained by a client is the client's agent for the purposes of the retention agreement," a settlement agreement entered into by the lawyer on behalf of a public agency is as good as having been created by the agency itself, and is available to the public. *Journal/Sentinel, Inc. v. Sch. Bd. of Sch. Dist. of Shorewood*, 521 N.W.2d 165, 170 (Wis. Ct. App. 1994) (affirming order for agency to furnish settlement agreement held by outside counsel). As has a court in Rhode Island. *Providence Journal v. Silva*, No. C.A. 87-1930, 1987 WL 859793, at (R.I. Super. Ct. Oct. 28, 1987) (ordering production of settlement agreement stored at outside counsel's office and explaining that "[t]he City hired the attorneys to draw up the settlement agreement . . . [t]o say that the agreement is not a public record simply because it was not physically kept on file by the City strains credulity.").

The result is the same in this dispute. Enfield hired lawyers to act on its behalf, and in that capacity, those lawyers (1) appeared in four federal cases for Enfield, and (2) resolved all four lawsuits against the town. The lawyers were agents of the town for

purposes of those suits in just the same way that its in-house counsel is for purposes of this dispute, and Enfield "used" the settlement documents to end the four litigations against it. Conn. Gen. Stat. § 1-200(5). Records relating to the Avalos, Salas, and Trowbridge litigations are public records that Enfield must retrieve from its lawyers and provide to the Foundation as requested.

2.2 Additionally, the Rules of Professional Conduct Would Obligate Enfield's Lawyers to Produce the Settlement Records to Enfield on Request

Independent confirmation of Enfield's control over the disputed records comes from the rules of professional conduct. Had Enfield bothered to ask its lawyers for copies of the records sought by the Foundation, the lawyers would have been obligated to furnish them to Enfield.

Connecticut lawyers must "promptly comply with reasonable requests for information" from a client. Conn. R. Prof'l Conduct 1.4(a)(4). That duty continues after the conclusion of the lawyer's representation, after which, the lawyer must "surrender[] papers and property to which the client is entitled," such as the client's file. Conn. R. Prof'l Conduct 1.16(d). Those duties to provide clients with their own records do not occupy the least bit of a grey area in our law. As a result, Connecticut's disciplinary authorities routinely find lawyers to have violated Rules 1.4 or 1.16 when they fail to provide their clients or former clients with documents when requested.[13]

13 *See, e.g., Disciplinary Counsel v. Miniter*, No. CV094044362, 2011 WL 6934610, at *13 (Conn. Super. Ct. Nov. 30, 2011) (holding that lawyer violated Rule 1.16 when he failed to return former client's file, and explaining that "[a]ny request" by a former client "triggers a duty to find out what it is the client wants"); *Statewide Grievance Comm. v. Lambeck*, No. CV044003894S, 2005 WL 1272564, at **1, 4 (Conn. Super. Ct. May 2, 2005) (suspending defendant from practice of law for, among other things, violating Rule 1.16 by failing to produce former client's file upon request, and by failing to turn file over to successor counsel); *Statewide Grievance Comm. v. McGee*, No. CV020099371S, 2003 WL 22333085, at *3 (Conn. Super. Ct. Oct. 2, 2003) (disbarring attorney, in part, for violating Rule 1.16 by failing to provide former client documents upon request); *Hankerson v. Vickery*, No. 15-0517, slip op. at 3 (Conn. Statewide Grievance Comm. Apr. 22, 2016) (disciplining lawyer for violating Rule 1.4

Although the Connecticut courts have not addressed a public agency's claim that it is not entitled to ask for its own records from the very lawyer it hired to generate those records, North Carolina's have. Citing its version of Rule 1.16, that state's mid-level appellate court succinctly turned aside a town's claim that records held by its outside counsel were not public records because they were not in physical possession of the town. "[A]nything in a client's file, which is in the hands of the client's attorney, belongs to the client, with the exception only of the attorney's notes or work product." *Womack Newspapers v. Town of Kitty Hawk*, 639 S.E.2d 96, 104 (N.C. Ct. App. 2007) (affirming judgment that surveying and land purchase contracts were public records to be obtained from the town's lawyer and furnished to the requester).

The Commission should conclude the same here. If Enfield had asked its lawyers for the records sought in this dispute, the Rules of Professional Conduct would require

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where she failed to turn over client's appellate file to successor counsel); *Messina v. Cohen*, No. 14-437, slip op. at 3 (Conn. Statewide Grievance Comm. Feb. 13, 2015) (presenting lawyer to superior court for discipline where, in relevant part, lawyer violated Rule 1.4 in ignoring repeated requests from former client's malpractice counsel for complete copy of client's file); *Barron v. Jacobs*, No. 12-0211, slip op. at 3 (Conn. Statewide Grievance Comm. Oct. 18, 2012) (presenting lawyer for superior court for discipline where, among other problems, lawyer violated Rule 1.4 by ignoring multiple client requests for documents showing the status of her case); *Mongillo v. Goldstein*, No. 07-0856, slip op. at 4 (Conn. Statewide Grievance Comm. Feb. 22, 2008) (presenting lawyer to superior court for discipline, in part, for violating Rule 1.4 in ignoring client's requests for a copy of her file); *McNichol v. Kelly*, No. 07-047 (Conn. Statewide Grievance Comm. Feb. 15, 2008) (imposing discipline upon lawyer for violating Rule 1.4 by ignoring two letters from client requesting copy of his file); *Smith v. Wagoner*, No. 03-509 (Conn. Statewide Grievance Comm. Dec. 23, 2004) (recommending discipline for Rule 1.4 violation where bankruptcy lawyer ignored requests from client, and client's real estate lawyer, to provide records proving bankruptcy discharge); *Vasel v. Skelton*, No. 99-453 (Conn. Statewide Grievance Comm. 1999) (recommending discipline for Rule 1.4 violation where lawyer "never provided [client] with copies of any motions or other documents in [her] case, despite [client]'s request that he do so."); *Gray v. Brown*, No. 97-41 (Conn. Statewide Grievance Comm. 1997) (finding clear Rule 1.16 violation where lawyer refused to return former client's file without payment of a copying charge not mentioned in the retainer); *McCartney-Jahaf v. Chmielecki*, No. 97-751 (Conn. Statewide Grievance Comm. 1997) (reprimanding lawyer for violating Rule 1.4 by failing to furnish copy of client's file upon notice that client had fired lawyer); *Alexander v. Ayars*, No. 97-956 (Conn. Statewide Grievance Comm. 1997) (reprimanding lawyer for violating Rule 1.4 by refusing to release client's file without telling client that lawyer was retaining the file until all fees were paid by client); *Pickerstein v. Kuranko*, No. 96-401 (Conn. Statewide Grievance Comm. 1996) (same for Rule 1.4 violation where, among other failings, lawyer ignored client's requests for a copy of her file); *Voigt v. Mancini*, No. 95-0194 (Conn. Statewide Grievance Comm. 1995) (recommending discipline for violating Rule 1.4 by failing to return client's file to her upon request). *See also Rogalsky v. Farrell*, No. 96-129 (Conn. Statewide Grievance Comm. 1996) (recommending discipline for violating the Rule 1.3 duty of diligence by ignoring client's request to return file, and recommending that lawyer be ordered to return file within a month).

the lawyers to provide them to Enfield. Enfield therefore has "control" over the disputed records, Conn. Gen. Stat. § 1-206(a), and must fetch them from its lawyers and produce them to the Foundation.

3. It is Irrelevant that an Insurer Paid for Enfield's Lawyers

Lastly, Enfield advances a theory that, because its defense lawyers in the four lawsuits were paid for by an insurance carrier, Enfield has no ability to obtain the requested records from the lawyers. But the question of who paid for the lawyers is irrelevant to the relationship enabling Enfield to obtain the records that its lawyers drafted for it.

Most obviously, the lawyers who represented Enfield in the four litigations at issue in this dispute did not appear for the insurer. The insurer was not a party to any of the lawsuits,[14] and the lawyers only acted for Enfield.[15] The lawyers worked on Enfield's behalf alone, and it was they, and not the insurer, who functioned as the town's agent in resolving the four suits.

Secondly, the fact that an insurance carrier paid for some or all of the legal services provided to Enfield does not interpose the carrier into the lawyer-client

14 *See* Complaint, *Avalos v. Town of Enfield*, No. 15-cv-902 (D. Conn. June 11, 2015) (petitioner's Exhibit A in Commission docket number 2016-791); Third Amended Complaint, *Trowbridge v. Town of Enfield*, No. 15-cv-688 (D. Conn. July 24, 2015) (petitioner's Exhibit A in Commission docket number 2016-840); Complaint, *Ronnie Salas v. Town of Enfield*, No. 14-cv-1895 (D. Conn. Dec. 17, 2014) (petitioner's Exhibit E in Commission docket number 2016-791); Complaint, *Frank Salas v. Town of Enfield*, No. 14-cv-1883 (D. Conn. Dec. 16, 2014) (petitioner's exhibit G in Commission docket number 2016-791) (each listing the parties to the suit and none including an insurance carrier).

15 *See* James Tallberg notice of appearance, *Avalos v. Town of Enfield*, No. 15-cv-902 (D. Conn. June 22, 2015) (petitioner's Exhibit B in Commission docket number 2016-791); Patrick Allen notice of appearance, *Avalos v. Town of Enfield*, No. 15-cv-902 (D. Conn. Aug. 14, 2015) (petitioner's Exhibit C in Commission docket number 2016-791); Patrick Allen notice of appearance, *Ronnie Salas v. Town of Enfield*, No. 14-cv-1895 (D. Conn. Dec. 30, 2014) (petitioner's Exhibit F in Commission docket number 2016-791); James Tallberg notice of appearance, *Trowbridge v. Town of Enfield*, No. 15-cv-688 (D. Conn. May 19, 2015) (petitioner's Exhibit B to Commission docket number 2016-840); Patrick Allen notice of appearance, *Trowbridge v. Town of Enfield*, No. 15-cv-688 (D. Conn. June 18, 2015) (petitioner's Exhibit C to Commission docket number 2016-840) (each appearing for Enfield and individual defendants, but not any insurance carrier).

relationship. The Rules make clear that, should a third party pay for legal services rendered to a client, the lawyer works for the client and not the payer. Connecticut lawyers "shall not permit" a third party payer "to direct or regulate the lawyer's professional judgment in rendering such legal services." Conn. R. Prof'l Conduct 5.4(c). *See also* Conn. R. Prof'l Conduct 1.8 cmt (explaining prohibited transactions, and noting that "[b]ecause third-party payers frequently have interests that differ from those of the client, . . . lawyers are prohibited from accepting . . . such representations unless the lawyer determines that there will be no interference with the lawyer's independent professional judgment . . ."). Notably, in a situation in which someone other than the client is paying for the services rendered to the client, the lawyer's Rule 1.4 duty to provide the client with documents and information may not be subverted to suit the third-party payer. That obligation may not be dodged "to serve the lawyer's own interest or convenience *or the interests or convenience of another person*." Conn. R. Prof'l Conduct 1.4 cmt (emphasis added).

The Town's contention that its insurance carrier has anything to do with this dispute is therefore baseless, and the Commission should order the Town to immediately provide the Foundation with the records sought.

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April 4, 2017
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Unreported Cases

Disciplinary Counsel v. Miniter,
No. CV094044362, 2011 WL 6934610 (Conn. Super. Ct. Nov. 30, 2011)

2011 WL 6934610
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut,
Judicial District of Hartford.

DISCIPLINARY COUNSEL
v.
Francis A. MINITER.

Nos. CV106010154, CV094044362.
|
Nov. 30, 2011.

Opinion

AURIGEMMA, J.

***1** The court now considers the following multiple counts of two presentments filed by the petitioner, Disciplinary Counsel, against the respondent, Francis A. Miniter: a presentment dated May 19, 2009, case number HHD CV 09–4044362 (the "2009 Presentment"); a presentment dated May 20, 2010, case number HHD CV 10–6010154, amended on October 19, 2010 (the "2010 Amended Presentment").

The 2009 Presentment consists of two counts. The first count refers to Practice Book § 2–47(d)(1) and lists the five disciplinary Reprimands received by Respondent within five years of the date of the presentment. The second count refers to Grievance matter number 08–0054, *Wright v. Miniter.*

The 2010 Amended Presentment includes seven counts. Each of the seven counts of the 2010 Amended Presentment refer to seven different grievance matters in which the Reviewing Committee of the Statewide Grievance Committee ordered a presentment to be filed.

The two presentment cases were consolidated on January 20, 2011. The trial on the consolidated cases took place over four days. Both parties submitted a substantial amount of evidence and had an opportunity to call witnesses and cross examine.

2009 Presentment Count 1:

In the First Count of the 2009 Presentment, the Disciplinary Counsel alleges that Attorney Miniter has been reprimanded by the Statewide Grievance Committee five times within five years of the filing of the 2009 Presentment. Practice book § 2–47(d)(1) provides:

> (d)(1) If a determination is made by the statewide grievance committee or a reviewing committee that a respondent is guilty of misconduct and such misconduct does not otherwise warrant a presentment to the superior court, but the respondent has been disciplined pursuant to these rules by the statewide grievance committee, a reviewing committee or the court at least three times pursuant to complaints filed within the five year period preceding the date of the filing of the grievance complaint that gave rise to such finding of misconduct in the instant case, the statewide grievance committee or the reviewing committee shall direct the disciplinary counsel to file a presentment against the respondent in the superior court. Service of the matter shall be made as in civil actions. The statewide grievance committee or the reviewing committee shall file with the court the record in the matter and a copy of the prior discipline issued against the respondent within such five year period. The sole issue to be determined by the court upon the presentment shall be the appropriate action to take as a result of the nature of the misconduct in the instant case and the cumulative discipline issued concerning the respondent within such five year period. Such action shall be in the form of a judgment dismissing the

> complaint or imposing discipline as follows: reprimand, suspension for a period of time, disbarment or such other discipline as the court deems appropriate. This may include conditions to be fulfilled by the respondent before he or she may apply for readmission or reinstatement. This subsection shall apply to all findings of misconduct issued from the day of enactment forward and the determination of presentment shall consider all discipline pursuant to complaints filed within the five year period preceding the date of the filing of the grievance complaint that gave rise to the finding of misconduct even if they predate the effective date of these rules.

1. *Digiacomo–Canellas v. Miniter,* 05–0317A

***2** After a full hearing in which Attorney Miniter gave testimony, the Reviewing Committee held that Attorney Miniter violated Rule 1.3 [1] of the Rules of Professional Conduct when he filed a wrongful death action on behalf of his client beyond the statute of limitation period. He further violated Rule 1.4 [2] when he failed to inform his client that the case was dismissed and failed to respond to numerous requests for information.

The Reviewing Committee's decision states that at the hearing before the Reviewing Committee, Attorney Spinetti, who was Attorney Miniter's associate, testified that he made Attorney Miniter aware of the complainant's case shortly after the complainant retained Attorney Miniter's law firm because Attorney Spinetti knew that the case had to be brought in New York and Attorney Miniter was the only attorney in the firm who was admitted to practice in New York.

The decision further states that the accident at issue had occurred on September 7, 2000. On September 3, 2003, Attorney Miniter brought a wrongful death action in federal court in New York in the name of the estate of the decedent. In January 2004 the federal court dismissed the case with prejudice because it was not brought within New York's two-year statute of limitations. On that date the federal court also dismissed the "survival" claim without prejudice because it had not been brought in the name of the decedent's executor or administrator.

The decision further found that Attorney Miniter did not inform the complainant about the dismissal. Attorney Spinetti had to leave the practice for military duty and the complainant had such difficulty obtaining information from Attorney Miniter that she had to hire another attorney in late December 2004. That attorney made many attempts to obtain the complainant's file from Attorney Miniter, but was not able to obtain it until May of 2005. Only then did the complainant learn that the original lawsuit had been dismissed in January of 2004.

Rather than acknowledge that this is an existing reprimand issued after a hearing at which Attorney Miniter was able to give testimony, in his post-trial brief in this case, Attorney Miniter continues to take the position that he did nothing wrong. He blames everything on Attorney Spinetti, which he attempted to do before the Reviewing Committee. However, in the version of events in Attorney Miniter's post-trial brief, Attorney Miniter doesn't even acknowledge that he was the one who filed the action in New York.

2. *Hartford Judicial Panel v. Miniter,* 06–0262

This matter arose from Attorney Miniter's failure to pay a debt pursuant to a court ordered judgment. He waited until the date of the grievance hearing to request a continuance. On that date he sent his secretary to the hearing to request a continuance because he was appearing at a CHRO hearing. That request was denied. The Reviewing Committee held that it could not find by clear and convincing evidence a violation based upon the underlying nonpayment of debt. However the Reviewing Committee reprimanded Attorney Miniter for his failure to respond timely to the investigative grievance panel's letter requesting an explanation as to why the BKM judgment against him had not been satisfied and his failure to respond to the Grievance Complaint (even after an extension was granted) in violation of Rule 8.1(2).

3. *Smith v. Miniter,* 06–0323

***3** This complaint was filed after Attorney Miniter's client's CHRO case was dismissed. After a full hearing in which Attorney Miniter did not appear, the Reviewing Committee found that Attorney Miniter violated Rule 1.5(b) [3] for his failure to provide his client with a retainer agreement, Rule 1.3 for his failure to represent his client in a diligent manner, and Rule 1.4 for his failure to return his client's telephone calls and requests for information.

In *Smith,* the Reviewing Committee found that Attorney Miniter had known of the date of his grievance hearing for weeks, yet waited until the day before the hearing to file a motion for continuance. The Reviewing Committee denied the continuance and found that Attorney Miniter had failed to give any reason for why he had waited so long to file the motion for continuance, and had failed to represent that he had attempted to reschedule the other proceeding which he claimed prevented him from attending his grievance hearing.

Attorney Miniter appealed the ruling of the Reviewing Committee to the Superior Court. In the appeal, Attorney Miniter argued that when the Reviewing Committee failed to grant his motion for continuance, it had violated his due process rights. In rejecting this argument, the court, (Elgo, J.), stated:

> While it is clear that the appellant has a vested property interest entitling him to due process, this court's difficulty with the appellant's claim of prejudice is the extent to which it was self-imposed. More troubling still is the fact that the underlying allegations before the grievance committee related to his client's claims that he failed to act with reasonable diligence and promptness in his dealings with her, in violation of Rule 1.3, and her claims that he failed to communicate with her, in violation of Rule 1.4. In this context, his failure to file a timely motion for continuance and to comply with reasonable requests for information so that the grievance committee can fairly assess his request for continuance is not de minimis. The appellant's very right to practice law was contingent on his ability to address issues relating to his diligence and prompt communication. Yet, even with reminders of the hearing and explicit direction as to the steps he should take in order to seek a continuance, the appellant failed to comply with reasonable rules promulgated by the grievance committee. This is not a situation where the appellant represented that he made attempts to resolve his conflict and was denied, nor is this a situation where he asserts that there were exigent circumstances that the statewide grievance committee failed to take into account. Indeed, the appellant makes no claim that the statewide grievance committee refused to apply the rules or applied them unfairly; *rather, his argument amounts to a claim that the rules should not apply to him* ...

Miniter v. Statewide Grievance Committee, 2009 Ct.Sup. 9319, 9235–9326, Nos. CV–074029199, CV–074030204, CV–084037292, Superior Court, Judicial District of Hartford at Hartford (June 3, 2009, Elgo, J.). [4] Emphasis added.

4. *Hartford Judicial Panel v. Miniter,* 06–0577

***4** This complaint arose from an overdraft notice. After a hearing in which Attorney Miniter testified, the Reviewing Committee reprimanded Attorney Miniter for again violating Rule 8.1(2) [5] by failing to respond to investigatory letters from the Statewide Grievance Committee, to the local panel's request for information and to the grievance complaint.

Attorney Miniter also appealed the Reviewing Committee's decision to the Superior Court. In denying his appeal the court, Elgo, J., stated

> In this matter, Bank of America notified the statewide grievance committee of an overdraft in the appellant's clients' funds account. Although the appellant responded initially to inquiries by the statewide grievance committee concerning the overdraft, he failed to respond to follow-up inquiries and requests for documentation on February 10, 2006. As a result, on March 16, 2006, the statewide grievance committee referred his failure to document adequately his explanation for the overdraft to the grievance panel for investigation. By letter on March 27, 2006, the panel gave the appellant thirty days to respond to the initial request for documentation. Again, the appellant failed to respond to this letter and as a result, a grievance complaint was filed on June 21, 2006.

Miniter v. Statewide Grievance Committee, supra, at p. 9327.

5. *Lee v. Miniter,* 07–0484

This complaint was filed by a client seeking return of alleged unearned attorneys fees. After a full hearing in which Attorney Miniter gave testimony, the Reviewing Committee reprimanded Attorney Miniter for violating Rule 1.4 for his failure to return his client's phone calls and failure to communicate to the client.

Attorney Miniter appealed this case to the Superior Court. In affirming the ruling of the Reviewing Committee, the court, Elgo, J., described the facts as follows:

> The reviewing committee found the following facts. The appellant had accepted $3,000 of a $5,000 retainer agreement signed on October 7, 2006, which provided in relevant part that "[i]f [the client] directs] us to terminate the litigation, we will be entitled to payment of attorneys fees from [the client] on the basis of the reasonable time expended by us to that point." In February 2007, the complainant decided against pursuing his legal claim and wrote to the appellant terminating his representation and requesting a refund of the $3,000. The committee further found that the appellant failed to respond to written communications and numerous telephone calls. After a grievance complaint was filed in May of 2007, the appellant submitted a letter dated June 21, 2007 in which he documented his return of $1,230 to the complainant with an accounting of his work.
>
> The reviewing committee found that the respondent acknowledged that he failed to communicate to this client by either U.S. mail or email, claiming only that he believed his office called the complainant in March or April to discuss the issue of fees. The complainant disputed this claim, asserting that he received no telephone communications from the appellant. The appellant further attributed his lack of communication to computer issues to the extent that he was unable to generate a final accounting of services rendered.

***5** *Miniter v. Statewide Grievance Committee, supra,* at pp. 9328–29.

In rejecting Attorney Miniter's claim that he was unfairly prevented from calling his secretary as a witness, the court stated:

> The appellant also claims he was denied an opportunity to present his secretary as a witness. The record, however, does not support this claim. Instead, the record indicates that the appellant had rested without suggesting that he had witnesses beside himself. In fact, the reviewing committee expressed a possible interest in hearing from the appellant's secretary, and indicated that they would review the record to determine if they believed there was a need for additional testimony. The reviewing committee asked the appellant and the complainant whether they had any objection to her possible return as a witness, but nowhere in the record does the appellant request an opportunity to present his secretary. Moreover, the reviewing committee also indicated that the appellant could

> subsequently submit documentation of his secretary's communications if available. The record indicates no effort on the part of the appellant to present testimonial or documentary evidence relating to his secretary's alleged communications on his behalf. Thus, the court rejects this claim.

Miniter v. Statewide Grievance Committee, supra, at pp. 9329–30.

Attorney Miniter's only mention of this case in his Post–Trial Memorandum is: "Defendant was reprimanded under Rule 1.4 for failure to adequately communicate with the client, despite his testimony as to communications." Post–Trial Memorandum at p. 9.

Attorney Miniter again implies that the reprimand would not have issued if the Reviewing Committee had only believed him, rather than the complainant. Again, Attorney Miniter refuses to acknowledge any wrongdoing on his part even though he admitted to the Reviewing Committee that his only communications with the complainant were *oral* in a case where the issue was whether he had used any of the complainant's retainer—an issue which should have been addressed with a *writing* documenting his services.

2009 Presentment Count 2: *Wright v. Miniter,* 08–0054

At trial Grace Wright gave credible testimony that she had paid Attorney Miniter $1,500.00 to represent her as a plaintiff in a civil matter against the City of Hartford. The payment was in the form of three checks totaling $1,150 and the balance in cash or credit card. The retainer agreement between Attorney Miniter and Ms. Wright provides in pertinent part:

> 4. *Legal Fees and Expenses.* You agree to pay contingent fee whereby [Miniter and Associates] will receive one-third (33 1/3%) of any amount awarded after trial or in settlement of this claim ... A retainer of $1,500 is required at the time you execute this retainer agreement. *Said retainer will be credited towards the 33 1/3% contingency fee and shall not be in addition to the contingency fee.*
>
> In addition to this fee, you will also be billed for out-of-pocket expenses, including depositions fees, long distance telephone and photocopying. *You will receive monthly a monthly statement showing the sums billed and received each month* ...

***6** Emphasis added.

There was no evidence presented that Attorney Miniter ever sent Ms. Wright any monthly statements showing out of pocket expenses. At trial Attorney Miniter presented evidence that he had incurred expenses totaling $230. In his Post–Trial Memorandum Attorney Miniter refers to a filing fee of $300. However, he presented no evidence to support this fee at trial. Attorney Miniter failed to document any expenses in the proceedings before the Grievance Committee.

On April 26, 2005, Ms. Wright and the City of Hartford entered into a Settlement Agreement. Under the terms of the Settlement Agreement Ms. Wright was to receive a total of $16,667 and Attorney Miniter was to receive $8,333. Attorney Miniter points out that the court did not admit the Agreement into evidence at the trial. He argues that the Settlement Agreement supports his position that Grace Wright had agreed to allow him his full fee without any deduction for the retainer. That Agreement was between Grace Wright and the City of Hartford. There was no evidence that anything in the agreement varied the retainer agreement between Ms. Wright and Attorney Miniter.

Ms. Wright testified that she relied upon Attorney Miniter's verbal assurances and the retainer agreement itself that her $1,500.00 retainer fee would be credited to her upon receipt of the settlement proceeds. She further testified that the credit was discussed with Attorney Miniter at the time the ultimate settlement was offered and that the credit was a factor in her agreeing to the $25,000.00 settlement.

Ms. Wright received the settlement proceeds in mid 2005. Attorney Miniter failed to include a $1,500.00 check written from his own IOLTA account reflecting Ms. Wright's retainer credit. Attorney Miniter testified that Ms. Wright verbally agreed to pay costs out of the $1,500.00 retainer. Attorney Miniter never documented that verbal agreement. He never provided her with a disbursement sheet showing what costs were being paid.

He never provided her with a statement of account explaining what costs were applied to her retainer. The court finds that Attorney Miniter's testimony as to Ms. Wright's verbal agreement to vary the terms of the retainer agreement is not credible.

Not only did Attorney Miniter fail to give Ms. Wright the $1,500.00 credit as he had agreed to do, he also failed even to respond to her requests for information as to the $1,500.00 due. Attorney Miniter testified that he never heard from Ms. Wright until the grievance. However, Ms. Wright testified that she attempted to contact Attorney Miniter through phone calls and e-mails. She also sent him a letter dated December 27, 2007, in which she stated:

> After the case settlement between myself and the City of Hartford/Hartford Public Schools in Winter/Spring of 2005, you received 33 and 1/3 percent of the $25,000 and I received 66 and 2/3 percent, equivalent to $16,667. You did not give me the $1,500 credit as promised.
>
> ***7** On several occasions, I have tried so hard to contact you, but you refuse to return any of my phone calls or emails ...

Although at trial Attorney Miniter finally submitted some indication of costs associated with Ms. Wright's case, he failed to show any evidence supporting his claim that he paid the costs from Ms. Wright's escrow. In fact, the "escrow" did not exist. Ms. Wright's payments were deposited directly into Attorney Miniter's operating account immediately upon receipt without any correlation to any costs incurred in direct contravention of the retainer agreement and Rules 1.5(a) and 1.15.

It is a well settled principle that "[c]ontingent fees, like any other fees, are subject to the reasonableness standard of subsection (a) of (Rule 1.5). In determining whether a particular contingent fee is reasonable, a lawyer must consider the factors that are relevant under the circumstances." Rule 1.5(a) Official Commentary. *Virginia Riggio v. Orkin Exterminating Co., Inc.,* 58 Conn.App. 309, 753 A.2d 423 (2000); *Pfeifer v. Sentry Insurance,* 745 F.Sup. 1434, 1443 (E.D.Wis.1990) ("Courts have inherent power to determine the reasonableness of attorney fees and to refuse to enforce any contract that calls for clearly excessive or unreasonable fees").

> Contracts for contingent fees, generally having a greater potential for overreaching of clients than a fixed-fee contract, are closely scrutinized by the courts where there is a question as to their reasonableness. This close scrutiny arises from the duty of the courts to guard against the collection of a clearly excessive fee, thereby fulfilling the primary purpose of attorney-disciplinary proceedings, specifically, protecting the public and maintaining the integrity of the legal profession.

West Virginia State Bar Comm. on Legal Ethics v. Tatterson, 352 S.E.2d 107, 114 (W.Va.1986).

Connecticut Rules of Professional Conduct, Rule 1.5(a) provides that:

> (a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:
>
> (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
>
> (2) The likelihood, if made known to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
>
> (3) The fee customarily charged in the locality for similar legal services;
>
> (4) The amount involved and the results obtained;
>
> (5) The time limitations imposed by the client or by the circumstances;
>
> (6) The nature and length of the professional relationship with the client;
>
> (7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and
>
> (8) Whether the fee is fixed or contingent.

The eight factors specified are "not exclusive." *Rule 1.5(a) Official Commentary.* The taking of a one-third contingency fee was not found to be unreasonable by the Reviewing Committee. However, taking the $1,500.00 in addition to the one-third in derogation of the retainer agreement is clearly unreasonable.

***8** There was no testimony provided that would support a conclusion that the time and labor required for this case was out of the ordinary or that acceptance of this particular case precluded Attorney Miniter from other employment. Neither Attorney Miniter nor Ms. Wright testified that Attorney Miniter made it known that the acceptance of the case would preclude other employment. The one-third contingency fee accurately reflects a reasonable fee to charge for the amount involved and the results obtained, the nature and length of the relationship with the client and the experience and reputation and ability of Attorney Miniter. It does not support the extra fee taken. See, *Disciplinary Counsel v. Smigelski,* 2009 Ct.Sup. 14609 (Aug. 31, 2009) (Respondent suspended for 15 months for charging and collecting excessive fees in violation of Rules 1.5(a) and 1.15(b)).

Rule 1.15(b) and Practice Book Section 2–27(a) [6] require an attorney to hold client funds in a separate trust fund account until earned. Disciplinary Counsel's exhibit 11 and Attorney Miniter's testimony support the fact that Attorney Miniter deposited check number 1058 in the amount of $700.00, check number 1068 in the amount of $250.00, and check number 1136 in the amount of $200.00 directly into his operating account. The retainer funds were never deposited into his client's trust fund account. This conduct was contrary to the terms of the retainer agreement and in violation of 1.15(b).

Rule 1.15(e) [7] requires an attorney to promptly deliver to the client property that the client is entitled to and to render a full accounting regarding such property. Despite numerous requests, Ms. Wright never received a credit for her retainer, a return of her retainer, nor an accounting as to what happened to her money.

There are few, if any, defenses or excuses that will justify a failure to promptly give notice of, deliver, and account for a client's funds or other property. See *Wrighten v. United States,* 550 F.2d 990, 991 (4th Cir.1977) (lawyer's contention that he had reimbursed "almost" all of client monies was no defense); *In re Freel,* 433 N.E.2d 274 (Ill.1982) (fact that disciplinary proceeding was pending against lawyer was not a valid reason to delay turning over funds to client); *Louisiana State Bar v. Mayeux,* 184 So.2d 537 (La.1966) (lawyer's "dire financial circumstances" not a defense); *Maryland Attorney Grievance Comm'n v. Stolarz,* 842 A.2d 42, 20 *Law. Man. Prof. Conduct* 98 (Md.2004) (defense that oversight was product of "innocent error" was unavailing, as rule has no good faith error exception); *In re LaQua,* 548 N.W.2d 372 (N.D.1996) (delay attributable to procrastination and lethargy not justified even though there was no fraud, dishonesty, or deceit and lawyer did not convert assets to own benefit); *In re Struthers,* 877 P.2d 789 (Ariz.1994) (funds, at least initially, belong to client and can be claimed by lawyer only after proper notification and accounting). Nor is it a defense to argue that the unaccounted-for money was used to pay legitimate attorneys fees. *Greenbaum v. California State Bar,* 126 Cal.Rptr. 785 (Cal.1976) (lawyer may not "unilaterally" determine and satisfy fees by withholding client funds); *People v. Murray,* 912 P.2d 554 (Colo.1996) (lawyer delivered no record of how or what money was used to pay lawyer's fees or of correspondence with client's creditors).

***9** Attorney Miniter's excuses for failing to credit or return the retainer to Ms. Wright are insufficient under the foregoing case law. He argues, alternatively, that he made a new oral agreement with Ms. Wright, or that the retainer was used for the payment of expenses. He claims that under the oral agreement he was not obligated to credit Ms. Wright for the $1,500 retainer. As set forth above, the court does not find that there was any such agreement. As to the latter argument, even if there were $530 in expenses, as Attorney Miniter claims, rather than the $230 for which Attorney Miniter offered evidence, the Retainer Agreement still required that Attorney Miniter credit Ms. Wright with almost $1,000. As Attorney Miniter never provided Ms. Wright with a monthly (or any) statement of expenses, as the Retainer Agreement required, the latter excuse for his failure to credit or return the retainer is inadequate.

For all the foregoing reasons the Disciplinary Counsel has presented clear and convincing evidence that Attorney Miniter has violated Rules of Professional Conduct 1.5(a), 1.15(b) and 1.15(e).

2010 Amended Presentment Count
One: *Gale v. Miniter,* 08–0768

This matter arises out of a Grievance complaint filed by Mr. Gale, a court reporter, who had not been paid for services rendered to Attorney Miniter. Mr. Gale obtained a small claims judgment in the amount of $577.72. Although the court ordered weekly payments of $35.00, Attorney Miniter failed to follow the court order. The judgment was eventually satisfied by way of garnishment on Attorney Miniter's bank account.

Rule 8.4(4) states that it "is professional misconduct for a lawyer to: (4) engage in conduct that is prejudicial to the administration of justice." An attorney who disregards court orders indicates an indifference to legal obligations and violates Rule 8.4(4). See, *Florida Bar v. Walton,* 952 So.2d 510, 23 *Law. Man. Prof. Conduct* 18 (Fla.2007) (failure to comply with statutory obligation to record satisfaction of judgment); *In re Stanbury,* 561 N.W.2d 507 (Minn.1997) (lawyer's stop-payment order on personal check for court filing fee and refusal to satisfy law library's judgment against him for computer research were prejudicial to administration of justice, notwithstanding lawyer's belief that his disagreement with court's decision justified stop-payment order).

Attorney Miniter did not offer any reason at trial for his failure to pay the judgment of Mr. Gale. He argues only that Rule 8.4(4) is "a very broad, undefined attempt at a catch-all provision ." See Defendant's Post–Trial Memorandum, p. 2 and p. 27.

The failure to pay a valid judgment is clearly conduct prejudicial to the administration of justice. Such failure, not contested by Attorney Miniter, establishes clear and convincing evidence that Attorney Miniter violated Rule 8.4(4).

2010 Amended Presentment Count
Two: *Davis et al. v. Miniter,* 09–0040

This Grievance case arises from Attorney Miniter's representation of Trinene Davis, Michael Ayers, Shirley Weaver and Regina Moore in their federal discrimination suit against the Department of Children and Families ("DCF"). All four complainants testified that they each entered into a retainer agreement with Attorney Miniter and paid $2,000.00. Based on the testimony from the complainants and Attorney Miniter as well as Judge Underhill's' "Ruling On Motion To Open Dismissal And Judgment" dated June 27, 2006 and Judge Arterton's "Ruling On Defendant's Motion To Dismiss" dated November 21, 2007, the court finds as follows.

***10** The complainants first consulted Attorney Miniter in September of 2002. On July 20, 2004 the first federal suit was filed. On or about December 27, 2005 that suit was dismissed. On January 9, 2006 Attorney Miniter filed a Motion to Reopen the dismissal. On June 27, 2006 that motion was denied by Judge Underhill.

In his decision denying the Motion to Reopen, Judge Underhill states:

> On December 7, 2004, DCF filed a motion to dismiss plaintiffs' complaint, pursuant to Rules 12(b)(1) and 12(b)(2) of the Federal Rules of Civil Procedure, based on lack of subject matter jurisdiction, sovereign immunity, the Eleventh Amendment, failure to exhaust, and failure to state a claim. On December 27, 2004, plaintiffs filed a motion for an extension of time to respond to the motion to dismiss, and on January 4, 2005, I granted the motion, extending the deadline for plaintiffs' response to January 27, 2005 ... Plaintiffs did not file a response to DCF's motion to dismiss on January 27, 2005, *nor did they ever file a response to DCF's motion to dismiss over the course of the next year.* A review of the docket sheet indicates that the plaintiffs did not request an additional extension of time.
>
> Even though plaintiffs did not request any additional extensions of time, *my chambers contacted plaintiff's counsel at least three times between January 2005* and December 2005, *reminding counsel about the pending motion to dismiss and inquiring into whether counsel intended to file a response. Despite telephone reminders from chambers, plaintiffs' counsel did not file a motion to extension of time or a response to the motion to dismiss.*
>
> In the motion for extension of time, filed in January 2006, plaintiffs' counsel asserts that my chambers contacted him just before Christmas 2005 and that I ruled on DCF's motion to dismiss just after Christmas 2005. That assertion mischaracterizes what occurred. In reality, my chambers had already contacted plaintiffs' counsel at least two times prior to November 2005.

> Then, in November 2005, when DCF's motion to dismiss had been pending for nearly one year, my chambers contacted plaintiffs' counsel yet again (prior to Thanksgiving 2005, not prior to Christmas 2005). I then waited over a month to give plaintiffs' counsel a chance to file either a response to DCF's motion to dismiss or a motion for extension of time to respond. When a month had passed after the third phone call from chambers, and when I had still received no response from plaintiffs' counsel, I then ruled on DCF's motion to dismiss in December 2005, over one year after DCF filed the motion.

Emphasis added.

There is no evidence that Attorney Miniter ever advised the complainants that DCF had filed a Motion to Dismiss in December of 2004. Although the case was dismissed in December of 2005, it was only after the June 2006 decision denying the motion to open dismissal that Michael Ayers was told by someone other than the Attorney Miniter that his case had been dismissed. Mr. Ayers then alerted the other complainants. Attorney Miniter testified that he discussed either appealing the decision or filing a new suit with the complainants, who opted to file a new suit.

***11** On March 27, 2007, another complaint was filed. Attorney Miniter had 120 days to properly serve defendants or until July 27, 2007. On or about May 25, 2007 counsel for all parties signed and submitted a joint Rule 26(f) report that explicitly stated that "personal jurisdiction is contested." The defendants had asserted that service on the Office of Attorney General was improper because the plaintiffs were suing them in their individual capacity. Attorney Miniter failed to re-serve the defendants properly prior to July 27, 2007. On or about November 21, 2007 Judge Arterton dismissed that case for lack of proper service.

Mr. Ayers testified that he had to call Attorney Miniter's office and speak with the secretary in order to ascertain the status of his suit. Attorney Miniter presented no evidence that he sent any writing advising the complainants of this dismissal or the first dismissal.

More than a year after Judge Arterton dismissed the case for the second time, on December 28, 2008, Attorney Miniter filed the third suit. On January 20, 2009, the complainants filed a Grievance complaint against Attorney Miniter. On January 27, 2009 Attorney Miniter sent a letter to the complainants which stated: "Attorney Miniter will no longer be representing you in your lawsuit case unless the Grievance Complaint charges are dismissed. If there are any questions call our office."

On June 30, 2009, complainant Trinene Davis sent an e-mail to Attorney Miniter for the return of her files and paper work. She did not receive the file from Attorney Miniter until late 2009 and only after the intervention of the Chief Disciplinary Counsel, Attorney Dubois. Thereafter, Ms. Davis and Ms. Weaver continued to represent themselves pro se in the third lawsuit. Ms. Weaver testified that after paying Attorney Miniter $5,500 she no longer had funds to hire another attorney.

Attorney Miniter testified that the improper service of the second lawsuit was the fault of the marshal who made service. However, he has failed to present any written instructions to the marshal advising him to serve the defendants in hand or via abode service. In light of his argument to Judge Arterton in connection with the second motion to dismiss in which he incorrectly interpreted Connecticut General Statutes § 52–64,[8] it seems unlikely that he would have given any such instructions and, therefore, unlikely that the marshal made any error. Moreover, Attorney Miniter clearly had the opportunity to correct the error in service. Attorney Miniter knew on or about May 25, 2007, that personal jurisdiction was contested. However, he made no effort to re-serve properly or request an extension of time to re-serve prior to July 27, 2007. Instead, he argued before Judge Arterton that he had made proper service pursuant to § 52–64, which he claimed was the all-encompassing service provision for any civil action against state officials in their individual as well as official capacities.

***12** Ultimately, Judge Arterton held that § 52–57(a)[9] was the appropriate statute for service of process and that when a plaintiff sues a state employee in her individual capacity, the plaintiff must serve process on the defendant pursuant to § 52–57(a) not § 52–64.

Attorney Miniter also argued in the alternative that defendants had not given him any notice of their intent to challenge personal jurisdiction and service. The Court pointed out that the defendants had no duty to raise this issue prior to the motion to dismiss but that Attorney Miniter did have notice well in advance pursuant to the Rule 26(f) report.

Rule 1.3 requires an attorney to act with reasonable diligence. At the core of the duty of diligence is a lawyer's obligation to actually perform the work for which he was hired. In its extreme form, neglect can cause serious harm to the client because the mere passage of time may result in a missed statute of limitations, irreparable injury, or the loss of the source from which damages could be recovered. See e.g., *Office of the Chief Disciplinary Counsel v. Skyers,* 2010 Ct.Sup. 23295 (Nov. 30, 2010) ("As a result of the Respondent's failure to take action for his clients, both of their appeals had resulted in default dismissals. The court can conceive of few clearer examples of injury or potential injury to a client"); *Attorney Grievance Comm'n v. Queen,* 967 A.2d 198 (Md.2009) (plaintiff's lawyer disciplined for failing to correct misnomer of defendant in complaint, resulting in dismissal, and failing to brief appeal of dismissal order); *In re Reynolds,* 726 N.W.2d 341 (N.D.2009) (lawyer suspended from practice for pattern of neglecting litigation matters, including letting limitation period pass without filing suit in one matter and failing to respond to several discovery issues, motions, and notices of hearing in other matter).

One is hardpressed to find a more egregious example of lack of diligence than Attorney Miniter's conduct with respect to the first motion to dismiss as outlined in Judge Underhill's decision. Unfortunately for the complainants, Attorney Miniter's lack of diligence continued in his actions which gave rise to the granting of the second motion to dismiss.

As a result of improper service, assertions of inappropriate defenses and the overall lack of reasonable diligence, the complainants waited more than four years to be heard only to have their case dismissed before it even progressed to a trial on the merits. Disciplinary Counsel has proven by clear and convincing evidence that Attorney Miniter did not represent his clients with reasonable diligence.

Rule 1.4 imposes a general requirement for lawyers to keep clients informed about the status of a representation. See e.g., *Statewide Grievance Committee v. Gifford,* 2004 Ct.Sup. 2827 (Feb. 25, 2004); *In re Harris,* 868 A.2d 1011 (N.J.2005) (lawyer disbarred for failing to return client phone calls or report on status of several cases). Among the specific subjects about which lawyers have been required to inform clients are general status, deadlines, and scheduled hearings in litigation matters. See, *Disciplinary Counsel v. Driscoll,* 2007 Ct.Sup. 19536 (Nov. 13, 2007) (suspension following a finding of a violation of Rules 1.4 and 8.1(2) for failure to respond to client's repeated efforts to communicate and failure to respond to the grievance complaint); *Maryland Attorney Grievance Comm'n v. Hill,* 919 A.2d 1194 (Md.2007) (lawyer disciplined for failing to inform client of show-cause hearing necessitated by lawyer's tardy submission of consent order). Lawyers are also under a duty to respond promptly to a client's reasonable requests for information. See *In re Turner,* 361 S.E.2d 824 (Ga.1987) (lawyer disbarred for, among other violations, refusing for more than one year to return clients' telephone calls or keep appointments); *In re Waltzer,* 883 So.2d 973 (La.2004) (lawyer suspended for failing to return several clients' phone inquiries about cases over several years); *Maryland Attorney Grievance Comm'n v. McCulloch,* 919 A.2d 660 (Md.2007) (lawyer suspended for failing for several months to respond to client's e-mail discharging her and requesting refund of unearned retainer).

***13** All four complainants testified that they did not receive information from Attorney Miniter on the status of their cases. There were no billing statements which detailed services being performed or costs being accrued on their behalf. There were no update letters. There were no phone calls.

They were never informed by Attorney Miniter when their cases were dismissed. Their-phone calls and e-mails went unanswered. According to Ms. Davis's e-mail of June 30, 2009, she had been attempting to communicate with Attorney Miniter and arrange for return of her documents since February 11, 2009. Ms. Davis testified that she has never received her full file even to this day.

Attorney Miniter failed to keep his clients apprised of the status of their case and refused to return inquiries, e-mails and phone calls. His conduct exemplifies his complete disregard for and lack of respect for his clients and his clients' rights. Based on the foregoing the Disciplinary Counsel has proved by clear and convincing evidence that Attorney Miniter has violated Rule 1.4.

Rule 1.16(d) requires an attorney to surrender papers and property to which his client is entitled and to refund any advanced fee not earned. [10] Attorney Miniter's failure to return complainants' documents in a timely manner constitutes a violation of Rule 1.16(d). Any

request triggers a duty to find out what it is the client wants. See, e.g., *Dubose v. Shelnutt,* 566 So.2d 921 (Fla.Dist.Ct.App.1990) (client request for "depositions of following witnesses" triggered duty to call client and find out exactly what client needed). The fact that it might be hard to locate all the files is not a good excuse. In *Sage Realty Corp. v. Proskauer Rose Goetz & Mendelsohn LLP,* 743 N.Y.S.2d 72, 18 *Law. Man. Prof. Conduct* 375 (App.Div.2002), the court ruled that the client could insist that the firm keep hunting through its records to find and turn over several missing documents which the firm thought might be commingled with other client files, even though the firm had already located and relinquished nearly everything and claimed that further searching would be onerous. Attorney Miniter's failure to return his client's property is a violation of Rule 1.16(d).

The Grievance Complaint was filed by the complainants in January 2009. Attorney Miniter failed to file any answer or other written response to the complaint. Attorney Miniter claims that because an earlier complaint by the same complainants was dismissed, [11] he did not respond to this complaint.

Courts have held that the failure to cooperate at the investigatory stage may lead to an interim suspension, with the lawyer then subject to the additional charge in a separate proceeding. See, *In re Lyons,* 599 N.Y.S.2d 643 (N.Y.Sup.Ct.App.Div.1993) (Respondent appeared pursuant to disciplinary committee's subpoena duces tecum but never produced required records; court suspended him pending compliance). Standing alone, non-cooperation or lack of candor to the disciplinary authority suffices as a basis for discipline. See, *In re Jackson,* 861 P.2d 124 (Kan.Sup.Ct.1993) (indefinite suspension for repeated failure to cooperate as well as neglect and failure to keep clients informed; as to one count of neglect, substantive charge dismissed but violation of duty to cooperate found).

***14** Lack of candor to the disciplinary authority or failure to cooperate may also be factored in as an element in aggravation at the sanctioning stage of the proceedings. See, *In re Riddle,* 857 P.2d 1233 (Ariz.Sup.Ct.1993) (lack of diligence responding to the disciplinary investigation mirrored respondent's lack of diligence in handling client's case, thus exhibiting pattern of misconduct); *In re Collins,* 409 S.E.2d 662 (Ga.Sup.Ct.1991) (lawyer defaulted in disciplinary proceeding and, at review stage, asked court to find possibility of impairment and to stay proceedings pending referral to Committee on Lawyer Impairment; court, noting his pattern of neglect in responding to disciplinary proceedings as well as in handling clients' affairs, as charged, suspended him).

Disciplinary Counsel has proved by clear and convincing evidence that Attorney Miniter violated Rule 8.1(2) in his lack of response to the Grievance Complaint by complainants Davis, Ayers, Weaver and Moore.

Attorney Miniter's letter dated January 27, 2009, threatened to withdraw as complainants' attorney if they did not drop the grievance. The complainants testified that they understood the letter to be a threat. Attorney Miniter testified that he sent this letter because of the inherent conflict resulting by the filing of the grievance complaint and that he explained this to his clients. There is no credible evidence to support Attorney Miniter's testimony. The letter itself contains no explanation as to the conflict of interest. Had Attorney Miniter wished to convey to his clients that their grievance against him would create a conflict of interest which would prohibit him from continuing to represent them, he could easily have said that in the letter. He did not. In order to turn the letter into an assertion of conflict of interest, rather than a naked threat, Attorney Miniter could and should have advised the complainants to seek the services of another lawyer, and should have assured them that he would cooperate in transferring their file to such lawyer. None of the witnesses testified as to any conflicts discussion ever having taken place. Attorney Miniter's letter of January 27, 2009 was the type of threat prohibited by is a violation of Rule 8.4. [12] As set forth above, the Disciplinary Counsel has presented clear and convincing evidence that Attorney Miniter has violated Rules 1.3, 1.4, 1.16, 8.1 and 8.4 of the Rules of Professional Conduct.

2010 Amended Presentment Count 3: *Bowler v. Minter,* 09–0598

In the Third Count of the 2010 Amended Presentment the Disciplinary Counsel alleges that on March 25, 2009, $7,910.26 was wrongfully removed from Attorney Miniter's IOLTA account by the Internal Revenue Service ("IRS"). The IRS had placed a levy on the IOLTA account due to Attorney Miniter's failure to pay payroll withholding taxes. Attorney Miniter learned of the IRS

levy on April 1, 2009 and contacted the IRS. The IRS released the levy on the IOLTA account and the funds were restored to the account on April 2, 2009. The Hartford Judicial Grievance panel found probable cause of a violation of Rule 8.4(3) (conduct involving dishonesty, fraud, deceit or misrepresentation).

***15** At a hearing on the complaint that took place on December 9, 2009, Attorney Miniter testified that he failed to pay payroll withholding taxes for his employees for the four quarters of 2008 because he did not have the money to do so. He also testified that he paid the IRS $11,750 in October 2009, but that he still owed interest and penalties.

At the trial on this presentment Attorney Miniter testified that he is presently current with his tax obligations.

Tax law violations are among those that violate Rule 8.4(3). See, e.g., *In re Benson,* 774 A.2d 258 (Del.2001) (untimely filing and payment of unemployment and payroll taxes; falsely certifying to court that taxes were paid on time and that books complied with Rule 1.15); *Maryland Attorney Grievance Comm'n v. Gore,* 845 A.2d 1204 (Md.2004) (law is "well settled" that "willful failure to pay taxes constitutes conduct prejudicial to the administration of justice in violation of Rule 8.4(d)"). [13]

The attorney in *In re Benson* falsely certified to the court that taxes were paid. The attorney in *Gore* failed to file monthly sales tax returns more than 16 times, owed more than $885,000 in back taxes and penalties, and faced criminal charges relating to same. His conduct was deemed to be willful. "Willful" is a word frequently used in the law without definition. It is defined as "done deliberately: intentional." Webster's Collegiate Dictionary, Tenth Ed., p. 1354.

Attorney Miniter testified that he did not pay his payroll tax because he did not have the money to do so. He has made efforts to pay the unpaid payroll tax and has done so. There was no evidence that he repeatedly failed to make payroll tax payments. Therefore, the Disciplinary Counsel has failed to prove a violation of Rule 8.4 with respect to this grievance.

2010 Amended Presentment
Count 4: *Davis v. Miniter,* 08–0231

This complaint arises from Attorney Miniter's representation of Trinene Davis in her workers' compensation matter. Ms. Davis retained Attorney Miniter in February of 2004. There was a hearing on the merits of her workers' compensation claim which lead to a decision dismissing the claim on December 5, 2006. As of that date Attorney Miniter had 20 days to file an appeal of the decision. Attorney Miniter testified that he did not receive a copy of the decision early enough to appeal timely. Attorney Miniter's testimony is contradicted by the very detailed findings in the Commissioner's decision dated September 17, 2008. (Disciplinary Counsel's Exhibit 6.)

Attorney Miniter testified that he knew of the December 5th decision as early as December 15, 2006 because he had called the Commissioner's office and asked about the decision. They told him that it had been decided on December 5, 2006 and the decision was already sent out. Attorney Miniter did not ascertain whether the decision was favorable to his client. Attorney Miniter failed to request an extension of time to file an appeal. He testified that he was thereafter out of his office for the Christmas holidays and did not file the appeal until January 2, 2007, after the appeal period had expired. Attorney Miniter failed to go to the Commissioner's office to obtain a copy of the decision. He also failed to have a staff member try to get a copy of the decision after he left the office on December 22nd.

***16** Attorney Miniter filed the appeal on January 2, 2007 after the time to appeal had expired. The Compensation Review Board of the Workers' Compensation Conimission ("Board") held a hearing "for the purpose of giving the appellant an opportunity to show cause why the appeal should not be dismissed under § 31–301(a) and for failure to prosecute the appeal with due diligence." Compensation Review Board Committee Decision dated September 17, 2008, p. 2.

The following language from the Board's Decision describes the factors that the Board considered in assessing whether Attorney Miniter was justified in filing the late appeal:

> We determined that the timeliness of the filing of the appeal would turn on when the Commissioner's decision was sent to claimant's counsel (citations omitted). The resolution of the timeliness of the instant appeal turns on whether the appellant can establish that

through no fault of the appellant the Commissioner's decision was not received within twenty days of the time it was sent. In accordance with *Schreck [v. Stamford,* 250 Conn. 592, 598 (1999)] we scheduled an evidentiary hearing so as to give *claimant's counsel an opportunity to prove that his failure to receive notice of the trial commissioner's decision was through no fault of his own.* The evidentiary hearing was held before this board over the course of two sessions, March 28, 2008 and May 16, 2008.

Among the documents available to the board was the U.S. Postal Service tracking records reflecting that the trial commissioner's *December 5, 2006 decision was delivered to claimant's counsel on December 7, 2006 at 1:17 p.m.* [Footnote 3 was inserted at this point in the decision and provided: "This exhibit was entered as Respondent's Exhibit 3 and Exhibit 4 was marked for ID on the basis of Attorney Miniter's objection. In part Attorney Miniter argued that he had never requested that the U.S. Postal Service provide the tracking receipt and the communication from the U.S. Postal Service date November 1, 2007 and faxed to 860–344–7487 states "Dear MINITER" in the salutation. Attorney Miniter suggested that a fraud was being perpetrated on the tribunal as the communication suggested that someone had falsely assumed his identity. To that end, Attorney Miniter requested that the evidentiary hearing be continued so that he could ascertain relevant U.S Postal law and regulations and investigate this misuse of his persona. At the May 16, 2008 session of the hearing, Attorney Miniter proffered no evidence as to this issue. We, therefore, deem any objection to the admission of Respondent's Exhibit 3–4 as waived."] That tracking document indicated that the piece of mail addressed to "Miniter at 100 Wells" was signed for by someone identified as B. Gineyard. At oral argument on November 16, 2007, Attorney Miniter stated that he had no knowledge of anyone by that name and no one in his employ was so named. At the first session of the evidentiary hearing the appellee subpoenaed Benita Gineyard ... Ms. Gineyard testified that she was the security officer for 100 Wells Street the location where Attorney Miniter had his office. *She testified that it was not uncommon for her to sign for mail and packages address to the building's tenants.* She further confirmed that the signature that was represented on the U.S.P.S. tracking documents was hers and while she could not specifically remember the circumstances surrounding the handling of this particular piece of mail, she testified that it was not unusual for her to sign for certified mail when a tenant's office was closed or a tenant's staff was unavailable. Under such circumstances, she would either give the mail to the tenant or tenant's staff when either she walked to the tenant's office or the tenant or tenant's staff retrieved the mail from her. Security Officer Gineyard further testified that she had worked as the Security Officer for the 8 a.m. to 4 p.m. shift at 100 Wells Street for a number of years.

***17** [I]t is the conclusion of this board that the witness's testimony was credible insofar as it provided a basis for an inference that Attorney Miniter and his office acquiesced to the manner in which mail was received and distributed by Security Officer Gineyard. It also appears that the practice by which mail was handled and distributed to Attorney Miniter's office was one that was established for some time ... *We do not think Attorney Miniter's office management practice regarding the handling of mail serves to excuse him from running of the appeal period set out in § 31–301(a).* Stated more succinctly, the appellant has not persuaded this board that, "through no fault of [its] own, [it] did not receive notice of the commissioner's decision within ten [twenty] days of the date it was sent." *Hatt, supra.*

From the foregoing decision, it appears that Board found that Attorney Miniter had received a copy of the decision 2 days after it was sent. The Board had to resort to rather extraordinary lengths (issuing a subpoena for the security guard) to discredit Attorney Miniter's claim that he did not timely receive the decision. Attorney Miniter also made this false claim(that he did not timely receive notice) to this court and to his client.

Ms. Davis filed a grievance complaint against Attorney Miniter on January 20, 2009. On January 27, 2009, Attorney Miniter sent a letter to Ms. Davis informing her that he would no longer represent her in her Appeal unless the grievance complaint against Attorney Miniter was withdrawn.

Again, Attorney Miniter's failure to meet the applicable deadline to file an appeal of the Board's decision is evidence of a violation of Rule 1.3 for lack of reasonable diligence. Attorney Miniter did not take any steps in assuring that the impending appeal period deadline would be met or at least extended. As discussed above, such conduct causes serious harm to clients as it did here. See, *Statewide Grievance Committee v. Johnson,* 2006 Ct.Sup.

20298 (Nov. 1, 2006) (Court suspended lawyer for 18 months after finding a violation of Rules 1.3, 1.4(a)(b) and 1.16(d)). The *Johnson* Court reasoned that "The commentary to Rule 1.3 provides that a 'lawyer should pursue a matter on behalf of his client despite opposition, obstruction or personal inconvenience to the lawyer' ... when Johnson received a full questionnaire from the EEOC ... she was obligated to ensure that it was returned within the deadline that the EEOC set." *Id.* at 20299–300. Disciplinary Counsel has proven by clear and convincing evidence that Attorney Miniter's conduct violated Rule 1.3.

Attorney Miniter produced no letters, e-mails, billing statements or any documentation of any kind to support his claim that he communicated reasonably with Ms. Davis as is required under Rule 1.4. As discussed above, communication is essential to the attorney-client relationship. Ms. Davis testified that she did not receive adequate status reports, returned phone calls or reasonable information as to her case. Instead, she was treated with disrespect and contempt. Nor did Attorney Miniter ever respond to requests for the return of Ms. Davis' file. Rule 1.16(d) requires a lawyer to return to the client her property with an accounting of funds upon termination of representation. Although asked repeatedly, Attorney Miniter failed to provide Ms. Davis with her entire file. Attorney Miniter's conduct clearly violated Rules 1.4 and 1.16(d).

***18** Ms. Davis also received a letter dated January 27, 2009 which advised her that if she did not withdraw her grievance against Attorney Miniter, he would stop representing her. She testified that she believed this letter was a threat. She further testified that Attorney Miniter did not discuss any conflict or explain any other basis for this letter. As discussed previously, this conduct is a violation of Rule 8.4(4).

In this matter as in many others, Attorney Miniter did not respond to the grievance complaint. This conduct illustrated Attorney Miniter's disregard for the attorney discipline process and violated Rule 8.1(2).

2010 Amended Presentment Count 6: *Dormsjo v. Miniter,* 09–0409 [14]

On December 28, 2000, Jan Dormsjo met with Attorney Miniter to discuss terminating a business contract. Mr. Dormsjo gave Attorney Miniter $1,000.00 as a retainer to be used against future billing. Attorney Miniter did not provide Mr. Dormsjo with a retainer agreement. Attorney Miniter testified that he had met with Mr. Dormsjo and introduced notes taken during that initial client conference. According to Attorney Miniter those notes provide that Attorney Miniter would charge $1,000.00 to review documents and search the state of Connecticut records. However, the notes actually contain the following language on that subject: "$1,000 Pub Docs St. of Ct. Recs."

Attorney Miniter produced a letter dated January 26, 2001 from Mr. Dormsjo with accompanying documentation. There was no evidence produced that Attorney Miniter ever analyzed these documents or billed for time as to this letter and documents. There is no billing information or time records which indicate that any services were rendered after the initial client conference. As of Attorney Miniter's January 28, 2003 invoice and statement for services and expenses, Attorney Miniter had not used any of the $1,000.00 retainer fee.

At trial Attorney Miniter introduced copies of some search documents for the purpose of showing that he had performed some work for Mr. Dormsjo. The probative value of those documents is questionable. They were not submitted by Attorney Miniter at the grievance hearing. Moreover, they do not change the fact that Attorney Miniter never provided Mr. Dormsjo any statement showing that Attorney Miniter had spent any time or expense on behalf of Mr. Dormsjo.

Mr. Dormsjo requested return of his $1,000.00 on several occasions. On October 9, 2008, Attorney Miniter sent Mr. Dormsjo an e-mail advising that he was reviewing his payment records and files and that he had recently moved. On December 14, 2008, Attorney Miniter e-mailed Mr. Dormsjo "I have found time records." Yet he provided no other time records other than the "invoice and statement" documents showing no time or expenses. On January 12, 2009, Mr. Dormsjo requested another update as to the status of the retainer paid. When he received no response, he filed a petition with the Connecticut Bar Association Legal Fee Dispute Program. Attorney Miniter refused to participate in that program. On April 27, 2009, Mr.

Dormsjo filed the Grievance Complaint. Attorney Miniter did not respond to the Grievance complaint.

***19** Attorney Miniter's claim that the terms of the agreement with Mr. Dormsjo were that Miniter would perform work searching for corporate documents in return for a $1,000 flat fee is unbelievable for several reasons. If that was the agreement, then there should have been some writing to that effect. Barring such a writing(there was no writing), then it is reasonable to expect to see a writing advising the client what Attorney Miniter had found in exchange for Mr. Dormsjo's $1,000. There is no such writing. Finally, if Attorney Miniter had had the claimed flat-fee agreement with Mr. Dormsjo, then why did he not explain that to the Grievance Committee in response to Mr. Dormsjo's complaint?

As previously discussed, Rule 1.5(b) requires a written agreement outlining the services to be performed and the fees therefor. Retainers may not be taken by attorneys until they are earned as reasonable fees under Rule 1.5(a).

The court does not believe Attorney Miniter's claim that he and Mr. Dormsjo agreed that Attorney Miniter would be paid a flat $1000 fee. Rather, the court finds that the $1,000 was paid by Mr. Dormsjo as a retainer. There was absolutely no evidence that Mr. Miniter did work to earn the fees. Without that support the fees cannot be determined reasonable as required under Rule 1.5(a). The Disciplinary Counsel has proven by clear and convincing evidence that Attorney Miniter has violated 1.5(a) for collecting an unreasonable fee and Rule 1.5(b) for failure to have a written retainer agreement. The Disciplinary Counsel has also proven by clear and convincing evidence that Attorney Miniter failed to return to his client the un-earned portion of the fees paid and to provide a full accounting of the retainer as is required under Rule 1.15(e) and Rule 1.16(d).

Attorney Miniter chose not to respond to Mr. Dormsjo's grievance complaint in violation of 8.1(2). Rule 8.1(2) imposes a separate and distinct ethical duty upon the attorney to respond to the grievance complaint, and furthers the goal of making available to the disciplinary authority all information relevant to the determination of the Attorney Miniter's compliance with the Rules of Professional Conduct.

2010 Amended Presentment Count Seven:
Hartford Grievance Panel v.. Miniter, 09–0441

The Hartford Judicial District Panel was asked to investigate Attorney Miniter's failure to pay a number of outstanding Small Claims and Civil Court judgments. A grievance complaint was filed on May 4, 2009. Attorney Miniter failed to respond to the complaint. Attorney Miniter did appear at the grievance hearing. Attorney Miniter testified during this presentment trial that he did not respond to the complaint because he felt that the conduct at issue was not conduct that should fall under the constitutionally vague purview of Rule 8.4 and he therefore did not have to respond to the complaint.

Attorney Miniter could have responded as to which, if any, judgments were paid, or why they were not paid. He also could have included his constitutional objection to Rule 8.4. Instead he chose to discredit the process by ignoring it.

***20** An attorney's refusal to abide by a court of competent jurisdiction's ruling by not paying the judgment of such court is a serious interference with the administration of justice. The argument advanced by the Attorney Miniter that failure to pay a judgment is not a violation of rule 8.4(4) of the Rules of Professional Conduct has been argued previously to no avail. See, *Douglas R. Daniels v. Statewide Grievance Committee,* 2001 Ct.Sup. 9327 (2001). In *Daniels,* the plaintiff had failed to return the unearned portion of a retainer fee, and the client filed suit to obtain a refund of those funds. Judgment of default was entered against the plaintiff in the amount of the retainer plus costs. The plaintiff, however, refused to pay the judgment amount. As a result, the client filed a grievance complaint, and the Statewide Grievance Committee determined that he had violated, *inter alia,* Rule 8.4(4) by not paying the judgment.

The Disciplinary Counsel has proven by clear and convincing evidence that Attorney Miniter's failure to pay the judgments against him violated Rule 8.4(4).

> Attorney disciplinary proceedings are for the purpose of preserving the courts from the official ministration of persons unfit to practice in them. An attorney as an officer

> of the court in the administration of justice is continually accountable to it for the manner in which he exercises the privilege which has been accorded him. His admission is upon the implied condition that his continued enjoyment of the right conferred is dependent upon his remaining a fit and safe person to exercise it, so that when he, by misconduct in any capacity, discloses that he has become or is an unfit or unsafe person to be entrusted with the responsibilities and obligations of an attorney, his right to continue in the enjoyment of his professional privilege may and ought to be declared forfeited. Therefore, if a court disciplines an attorney, it does so not to mete out punishment to an offender, but [so] that the administration of justice may be safeguarded and the courts and the public protected from the misconduct or unfitness of those who are licensed to perform the important functions of the legal profession. (Internal quotation marks omitted.)

Statewide Grievance Committee v. Shluger, 230 Conn. 668, 674–75, 646 A.2d 781 (1994).

Although the American Bar Association's Standards for Imposing Lawyer Sanctions have not been adopted by the judges of Connecticut, the Standards have been utilized by Connecticut courts as a guide in determining the appropriate sanction to impose in disciplinary proceedings. *Statewide Grievance Committee v. Shluger,* 230 Conn. 668, 673 n. 10, 646 A.2d 781 (1994); *Statewide Grievance Committee v. Glass,* 46 Conn.App. 472, 481, 699 A.2d 1058 (1997).

The Connecticut Rules of Professional Conduct reflect that the questions of whether discipline should be imposed and the severity of a sanction "depend on all the circumstances, such as the willfulness and seriousness of a violation, extenuating factors, and whether there have been previous violations." Connecticut Practice Book, Rules of Professional Conduct, Scope. Similarly, Standard 3.0 of the American Bar Association's Standards for Imposing Lawyer Sanctions provides that "[I]n imposing a sanction after a finding of lawyer misconduct, a court should consider: (a) the duty violated; (b) the lawyer's mental state; and the actual or potential injury caused by the lawyer's misconduct; and (d) the existence of aggravating or mitigating factors."

***21** Standard 9.22 aggravating factors include:

> (a) prior disciplinary offense: (b) dishonest or selfish motive; (c) a pattern of misconduct; (d) multiple offenses; (e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency; (f) submissions of false evidence, false statements, or other deceptive practices during the disciplinary process; (g) refusal to acknowledge wrongful nature of conduct; (h) vulnerability of victim; (i) substantial experience in the practice of law; (j) indifference to making restitution; (k) illegal conduct, including that involving the use of controlled substances.

Standard 9.32 mitigating factors include:

> (a) absence of a prior disciplinary record; (b) absence of a dishonest or selfish motive; (c) personal or emotional problem; (d) timely good faith effort to make restitution or to rectify consequences of misconduct; (e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings (f) inexperience in the practice of law; (g) character or reputation; (h) physical disability; (i) mental disability chemical dependency including alcoholism or drug abuse when; (1) there is medical evidence that the is affected by a chemical dependency or mental disability; (2) the chemical dependency or mental disability caused the misconduct;

> (3) the respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and (4) the recovery arrested the misconduct and recurrence of that misconduct is unlikely. (j) delay in disciplinary proceedings; (k) imposition of other penalties or sanctions; (l) remorse; (m) remoteness of prior offenses.

Disciplinary Counsel seeks that Attorney Miniter be disbarred or suspended from the practice of law for not less than ten years pursuant to Practice Book § 2–44, arguing that the aggravating factors with respect to Attorney Miniter include: prior disciplinary offenses, selfish motives, a pattern of misconduct, multiple offenses, bad faith obstruction of disciplinary proceedings by intentionally failing to file answers to grievance complaints, refusal to acknowledge wrongful nature of conduct, vulnerability of the victims, indifference to making restitution and substantial experience in the practice of law.

This court is most troubled by four factors common to all of Attorney Miniter's conduct involved in his many grievance complaints: his abiding disrespect and contempt for his clients; his refusal, or more disturbing, inability, to acknowledge his own misconduct; his total lack of remorse; and, finally, his pattern of lying about that misconduct to his clients, to state commissions, to grievance panels and to both federal and state court judges.

Attorney Miniter failed to offer any evidence of any mitigating circumstance and the court can find none.

Based on the foregoing, the court suspends Attorney Francis A. Miniter from the practice of law for a period of seven years.

All Citations

Not Reported in A.3d, 2011 WL 6934610

Footnotes

1 Rule 1.3 states that “A lawyer shall act with reasonable diligence and promptness in representing a client.”

2 Rule 1.4(a) states as follows: “A lawyer shall: (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(f), is required by these rules; (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter; (4) promptly comply with reasonable requests for information; and (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.”

3 Rule 1.5(b) states as follows: “The scope of the representation, the basis and rate of the fee and expenses for which the client will be responsible, shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate in the fees or expenses shall also be communicated to the client in writing before the fees or expenses to be billed at higher rates are actually incurred ...”

4 This decision was affirmed in a per curiam decision, *Miniter v. Statewide Grievance Committee,* 120 Conn.App. 904 (2010).

5 Rule 8.1(2) states as follows: “A lawyer ... in connection with a disciplinary matter, shall not (2) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.”

6 Rule 1.15(b) states as follows: “A lawyer shall hold property of clients or third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own property ... Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation.”

Practice Book Section 2–27(a) states as follows: “Consistent with the requirement of Rule 1.15 of the Rules of Professional Conduct, each lawyer or law firm shall maintain, separate from the lawyer's or firm's personal funds, one

or more accounts accurately reflecting the status of funds handled by the lawyer or firm as fiduciary or attorney, and shall not use such funds for any unauthorized purpose."

7 Rule 1.15(e) states as follows: "Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property."

8 Connecticut General Statutes § 52–64 provides:

> Service of civil process in any civil action or proceeding maintainable against or in any appeal authorized from the actions of, or service of any foreign attachment or garnishment authorized against, the state or against any institution, board, commission, department or administrative tribunal thereof, or against any officer, servant, agent or employee of the state or of any such institution, board, commission, department or administrative tribunal, as such, may be made by a proper officer (1) leaving a true and attested copy of the process, including the declaration or complaint, with the Attorney General at the Attorney General's office in Hartford, or (2) sending a true and attested copy of the process, including the summons and complaint, by certified mail, return receipt requested, to the Attorney General at the Attorney General's office in Hartford.

9 Conn.Gen.Stat. § 52–57(a) provides that except as otherwise provided, process in any civil action shall be served by leaving a true and attested copy, including the declaration or complaint, with the defendant, or at his usual place of abode.

10 Rules 1.16(d) states as follows: "Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect the client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advanced payment of fee that has not been earned ..."

11 This grievance complaint related to Attorney Miniter's conduct in allowing the first July 2004 suit to be dismissed.

12 Rule 8.4 provides:

> It is professional misconduct for a lawyer to:
>
> (1) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
>
> (2) Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
>
> (3) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
>
> (4) Engage in conduct that is prejudicial to the administration of justice;
>
> (5) State or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or
>
> (6) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

13 Connecticut Rule 8.4(3) is the same language as Maryland Rule 8.4(d).

14 The Disciplinary Counsel has withdrawn Count Five of the 2010 Amended Presentment.

Statewide Grievance Comm. v. Lambeck,
No. CV044003894S, 2005 WL 1272564 (Conn. Super. Ct. May 2, 2005)

2005 WL 1272564
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut,
Judicial District of Fairfield.

STATEWIDE GRIEVANCE COMMITTEE
v.
Brian LAMBECK.

No. CV044003894S.
|
May 2, 2005.

Attorneys and Law Firms

Conn Statewide Bar Counsel, East Hartford, for Statewide Grievance Committee.

Gallagher Law Firm, New Haven, for Brian E. Lambeck.

Opinion

DEWEY, J.

***1** The plaintiff, the Statewide Grievance Committee, filed a presentment in accordance with Practice Book § 31(a), charging attorney misconduct against the respondent, Attorney Brian Lambeck, who was admitted to the bar of this state in 1989.

The plaintiff alleges that on May 11, 1999 Michael Ferreira retained the respondent to represent him in the matter of *Harvey Weisiman v. Michael Ferreira d/ b/a/ Sports and Imports of Milford,* CV99-006628. The respondent filed an appearance.

Through judicial notification dated March 22, 2001 the respondent received notice of a June 15, 2001 trial date. Through judicial notice dated April 2, 2001 the respondent was advised of a June 7, 2001 pretrial conference. The respondent failed to appear at the pretrial. The trial court entered a default against Mr. Ferreira based upon a failure to appear. The court also entered a nonsuit with respect to Mr. Ferreira's counterclaim.

Four days later, on June 11, 2001 the respondent, his client and Attorney Joseph Geremia appeared at a previously scheduled deposition. They discussed the pending trial date.

On June 15, 2001 Attorney Geremia and his client appeared in court for the scheduled trial. The court allowed Attorney Geremia to proceed and entered a judgment accordingly. At the conclusion of the proceedings, as the trial judge was exiting the courtroom, the respondent and Mr. Ferreira appeared.

The respondent assured Mr. Ferreira that he would file a motion to re-open the judgment. However, based upon the judgment, on September 16, 2001 a bank execution was issued against Mr. Ferreira. On Mach 26, 2002 Mr. Ferreira learned that his funds had been released to satisfy the execution. The following month, on April 16, 2002 the respondent filed a motion to reargue the June 2001 judgment. That motion was denied as untimely.

Mr. Ferreira, who had difficulty contacting the respondent throughout these proceedings, retained new counsel, Attorney Brian Lema. The respondent did not return letters or phone calls. He was not available in his office. He refused to return Mr. Ferreira's file.

Mr. Ferreira filed a grievance on June 19, 2003. The respondent did not answer the grievance complaint within the time specified by Connecticut Practice Book 2-32(a)(1).

The plaintiff has alleged that the respondent has violated Rule 1 .3 of the Rules of Professional Conduct when he failed to appear in a timely manner for the June 15, 2001 trial and thereafter failed to file a timely motion to re-open the default judgment. The plaintiff next has alleged that the respondent has violated Rule 1.4(a) of the Rules of Professional Conduct inasmuch as he failed to keep Mr. Ferreira advised of the status of his civil action. The plaintiff further has alleged that the respondent has violated Rule 1.16 of the Rules of Professional Conduct insofar as he failed to return the client's file to Mr. Ferreira. The plaintiff finally has alleged that the respondent has violated Connecticut Practice Book 232(a)(1) when he failed to file a timely response to Mr. Ferreira's complaint.

***2** The plaintiff seeks in this proceeding to have the Superior Court impose a two-year suspension. The court conducted a hearing on the presentment at which time the respondent, represented by Attorney William Gallagher, appeared and testified.

The testimony and exhibits submitted at the hearing indicate that the factual allegations contained in the presentment filed against the respondent are essentially accurate. Furthermore, on September 29, 2000 the defendant was reprimanded by a reviewing committee of the Statewide Grievance Committee for violating Rules 1.1, 1.3, 1.4(a) and 1.6(d) of the Rules of Professional Conduct. On May 25, 2001 the respondent was reprimanded by a reviewing committee of the Statewide Grievance Committee at which time he was ordered to submit to audits and supervision of his trust accounts.

On March 22, 2002. the respondent was ordered by a reviewing committee of the Statewide Grievance Committee to attend a continuing legal education course in the area of probate law. Finally on October 2, 2003 the respondent was reprimanded by a reviewing committee of the Statewide Grievance Committee and ordered to submit quarterly audits for a period of eighteen months.

In his defense, the respondent suggests that the personal problems that resulted in the prior presentments and that contributed to the circumstances in the present case have been resolved. He further argues that court personnel and other counsel are responsible for the bulk of the problems that beset Mr. Ferreira. In particular, the respondent contends that the default judgment was unnecessary inasmuch as he did attend the trial, albeit late; that the court clerk's office failed to send proper notification; that the motion to re-open was ruled on "ex parte" and therefore improperly; and that subsequent counsel should have filed an appropriate motion to re-open.

This court finds by clear and convincing evidence, indeed beyond a reasonable doubt, that the respondent has engaged in the conduct alleged in the presentment. There has been a clear violation of the Code of Professional Responsibility. This court credits the testimony of Mr. Ferreira, Attorney Lema and Attorney Geremia. These witnesses established the fact that the respondent was aware of the trial date, failed to appear for trial at the time specified, failed to file a timely motion to re-open, failed to communicate with his client or successor counsel, and failed to respond to the grievance.

In analyzing this presentment, the court is guided by the principles outlined in *Statewide Grievance Committee v. Botwick,* 226 Conn. 299, 307, 627 A.2d 901 (1993). This court's duty is not "to mete out punishment to an offender, but [to act so] that the administration of justice may be safeguarded and the courts and the public protected from the misconduct or unfitness of those who are licensed to perform the important functions of the legal profession." (Internal quotation marks omitted.) "[O]f paramount importance in attorney discipline matters is the protection of the court, the profession of the law and of the public against offenses of attorneys which involve their character, integrity and professional standing.' (Internal quotation omitted.) *Statewide Grievance Committee v. Shluger,* 230 Conn. 668, 681, 646 A.2d 781 (1994).

***3** Any discussion of appropriate attorney discipline begins with recognition of the fact that a "presentment proceeding is neither a civil action nor a criminal proceeding, but is a proceeding sui generis, the object of which is not the punishment of the offender, but the protection of the court." *Statewide Grievance Committee v. Rozbicki,* 219 Conn. 473, 483 (1991), cert. denied, 502 U.S. 1094, 112 S.Ct. 1170, 117 L.Ed.2d 416 (1992). "An attorney as an officer of the court in the administration of justice, is continually accountable to it for the manner in which he exercises the privilege which has been accorded him. His admission is upon the implied condition that his continued enjoyment of the right conferred is dependent upon his remaining a fit and safe person to exercise it, so that when he, by misconduct in any capacity, discloses that he has become or is an unfit or unsafe person to be entrusted with the responsibilities and obligations of an attorney, his right to continue in the enjoyment of his professional privilege may and ought to be declared forfeited ... Therefore, [i]f a court disciplines an attorney, it does so not to mete out punishment to an offender, but [so] that the administration of justice may be safeguarded and the courts and the public protected from the misconduct or unfitness of those who are licensed to perform the important functions of the legal profession." *Doe v. Statewide Grievance Committee,* 240 Conn. 671, 684-85, 694 A.2d 1218 (1997), quoting *Massameno v. Statewide Grievance Committee,* 234 Conn. 539, CT Page 10995 554-55, 663 A.2d 317 (1995).

> It is this court's understanding that this prohibition of "punishment" in disciplinary matters does not mean that courts may not impose sanctions that are painful or unpleasant. Rather, the prohibition means only that the purpose of any sanction imposed on an attorney should not be mere "retribution," an element of punishment that is frequently equated, wrongly, in this court's view, with "punishment," which is generally considered to be an effort to serve five legitimate purposes: a) retribution, or the concept of "just desserts"; b) specific deterrence, the effort to assure that the individual offender does not recidivate; c) general deterrence, the effort to deter others from committing similar offenses by making an example of the individual offender; d) rehabilitation, the improvement of the offender's skills and morals so as to make him or her a better person; and e) incapacitation, the removal of an individual from a setting in which he or she could do harm. Specific and general deterrence, rehabilitation and incapacitation, to the extent that they are consistent with protection of the court and the public, are certainly appropriate considerations in professional discipline cases despite the fact that they are elements of "punishment."

Statewide Grievancd Committee v. McGee, No. CV02-0099371-S, Superior Court, Judicial District of Middlesex (October 2, Silbert, J.).

***4** The *Shluger* court suggested that courts consider the American Bar Association's Standards for Imposing Lawyer Sanctions (Standards). These Standards speak in terms of "aggravating" and "mitigating" factors. Aggravating factors include: "(a) prior disciplinary offenses; (b) dishonest or selfish motive; (c) a pattern of misconduct; (d) multiple offenses; (e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency; (f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process." *Statewide Grievance Committee v. Shluger,* 230 Conn. at 673 n. 10. Mitigating factors include: "(a) absence of a prior disciplinary record; (b) absence of a dishonest or selfish motive; (c) personal or emotional problems; (d) timely good faith effort to make restitution or to rectify consequences of misconduct; (e) full and free disclosure to disciplinary boards or cooperative attitude toward proceedings; (f) inexperience in the practice of law; (g) character or reputation ... j) interim rehabilitation in disciplinary proceedings; (k) imposition of other penalties or sanctions; (1) remorse; [and] (m) remoteness of prior offenses." *Id.*

Aggravating factors in the present case is a pattern of misconduct on the part of the respondent, all of which occurred within a relatively short period of time. Multiple violations "constitut[e] a pattern of misconduct for which simply another reprimand would not have been sufficient." *Shluger,* 230 Conn. at 680. There are, however, mitigating factors. There is no evidence of a dishonest or selfish motive. The respondent does not stand accused of committing any crime or attempting to steal his client's money. There were clearly personal and emotional problems that contributed to the pattern of conduct. The respondent had fulfilled interim rehabilitation.

The most difficult question is that of remorse. The respondent exhibited little. To the contrary, the Ferreira grievance was the result of *inter alia,* the trial court's alleged failure to send notice of the trial date;[1] of the trial court's improper entry of a default judgment,[2] the improper denial of the respondent's motion to re-open,[3] and subsequent counsel's failure to file appropriate motions.[4] The respondent's failure to accept more responsibility is troubling.

In considering the defendant's past offenses, his character and fitness to practice law, a reprimand will not suffice to protect the public and the administration of justice. Accordingly, pursuant to Practice Book § 31(a), Attorney Lambeck is suspended from the practice of law for one month, from July 1, 2005 to August 1, 2005.

So Ordered.

All Citations

Not Reported in A.2d, 2005 WL 1272564

Footnotes

1 The court finds that the respondent was aware of the trial date, having received official notice and having discussed the date at a deposition several days earlier. The respondent did arrive, although late, blaming poor directions and traffic. The client was aware of the date, time and place of the trial.

2 During oral argument, the respondent suggested that this ruling was contrary to general procedure. He did not argue that it was contrary to law.

3 The respondent argues that the motion to reopen was denied “ex parte.” There was no prejudice to either party by the trial court action. Furthermore, the respondent ignored the fact that the motion was untimely.

4 The respondent did not give successor counsel the Ferreira file until ordered to do so by the grievance committee. When pressed by the court, respondent concluded that he was responsible for only 25% of the problems that resulted in his presentation of Mr. Ferreira. Had he appeared at the schedule trial, there would have been no problem to discuss.

End of Document

Statewide Grievance Comm. v. McGee,
No. CV020099371S, 2003 WL 22333085 (Conn. Super. Ct. Oct. 2, 2003)

2003 WL 22333085
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut,
Judicial District of Middlesex.

STATEWIDE GRIEVANCE COMMITTEE,
v.
James A. McGEE, Jr.

No. CV020099371S.
|
Oct. 2, 2003.

Attorneys and Law Firms

Conn Statewide Bar Counsel, East Hartford, for Statewide Crievance Committee.

James A. McGee, Westbrook, pro se.

Opinion

JONATHAN F. SILBERT, Judge.

***1** This is a four-count amended presentment of attorney for misconduct in which the Respondent, James A. McGee, Jr., who was admitted to the bar of this state on May 19, 1980, is accused of numerous acts of misconduct arising out of his handling of four specific cases. The Petitioner requests that the Respondent be disbarred.

The Respondent has been under suspension since September 20, 2000, when the court, (Gordon, J.), suspended him from the practice of law for three years and imposed conditions for reinstatement. *Statewide Grievance Committee v. McGee,* Docket No. CV00-091634. There has been no evidence that those conditions have been satisfied, and the Respondent has not applied for reinstatement.

The Respondent was initially represented by counsel whose motion for leave to withdraw appearance was later granted. The Respondent filed a pro se appearance on May 19, 2003, but he did not attend the hearing on the presentment petition on September 29, 2003. Instead, the Respondent filed a faxed "motion for continuance and/or request to extend trial date," received by the court on the day of trial, in which he asserted that, "upon the advice of his criminal defense attorney, the defendant has been instructed to assert his Fifth Amendment privilege in the matters before this court." Although the Respondent refers to this as a "constitutional dilemma," the bald assertions in the motion do not constitute grounds for a continuance, and the court denied the motion in open court on September 29, the day of trial. The filing of this motion, however, confirmed the Respondent's awareness of the trial date, and, under those circumstances, the court agreed with the Petitioner that the trial could go forward despite the Respondent's absence.

At the September 29, 2003 hearing, the court heard testimony from Alexander Tighe, Esq.; John Bennet, Esq.; Westbrook Probate Court Judge Constance Vogell; Darryl Gesner; Carol Behrman, Esq.; Clinton Probate Court Judge Raymond J. Rigat; Walter J. Adametz; and Suzanne Edwards. The court also received twenty-one exhibits offered by the Petitioner. Based on the testimony and exhibits, the court finds the following.

As to the First Count of the Amended Petition: Beginning in February 1995, pursuant to powers of attorney, the Respondent administered the affairs of Veronica Planeta, a ninety-year-old woman with a variety of physical difficulties, including legal blindness and difficulty in hearing, and her son, Albert Planeta, who suffers from hydrocephalus and is both physically and mentally disabled. In June of 1998, the then Clinton probate court judge became concerned about the nature of Respondent's representation and appointed Carol Behrman, Esq. as a voluntary conservator of both the persons and the estates of the Planetas.

When Behrman requested that the Respondent provide her with the balance of any funds that he was holding for the Planetas, as well as copies of their financial records and an accounting, the Respondent avoided her calls and failed to comply. The Respondent continued to stonewall but eventually gave Behrman an accounting in May of 1999. Concerned by what she saw in the accounting, Behrman sought a hearing before the new probate court judge, Hon. Raymond Rigat, which hearing was held on June 16, 1999. At that hearing, Judge Rigat ordered the Respondent to turn over to Behrman the approximately $12,000.00 balance he indicated he was holding in his trust account by 5:00 p.m. that day. The Respondent violated

this order. He did not furnish a check until June 18, 1999, and that check was denied by the bank because of insufficient funds in the Respondent's trust account. The check finally cleared on the following day when new funds were inserted into the Respondent's trust account from some other source.

***2** The Respondent did not appear at the next scheduled probate court hearing, to which he had been subpoenaed, on March 8, 2000, necessitating the issuance of a capias for his appearance on March 9. On April 3, 2000, the Respondent finally filed an itemized billing statement and revised accounting which failed to account for more than $38,000.00 of estate funds. The accounting also indicated that the Respondent had charged the Planetas nearly $73,000.00 in fees over a three-year period. In his memorandum of decision, Judge Rigat found the accounting to be "deliberately misleading and manufactured for the purpose of hiding Attorney McGee's deliberate wrongdoing ..." and that McGee "has been engaged in a systematic bilking of these estates, which he now tried to hide by claiming absurdly exaggerated fees for his 'services.' " Based on his factual findings, Judge Rigat totally disallowed the Respondent's claim for fees.

Based on the evidence, the court finds that the Respondent violated Rule 1.4(a) of the rules of professional conduct by failing to promptly comply with a conservatrix's reasonable request for the estate funds and an accounting. The Respondent violated Rule 1.15(b) of the rules of professional conduct by failing to promptly deliver the estate funds to the conservatrix and by failing to promptly provide the conservatrix with an accounting as requested. The Respondent violated Rules 3.4(3) and 8.4(3)(4) of the rules of professional conduct by failing to comply with the order of the probate court directing him to turn over estate funds to the conservatrix by 5:00 p.m. on June 16, 1999. He violated Rule 1.15(b) of the rules of professional conduct by failing to safeguard the Planetas' funds in his clients' trust account. He violated Rules 1.15(b), 3.4(3) and 8.4(4) of the rules of professional conduct by failing to supply financial records as ordered by the probate court. He failed to complete accurate records of the funds he administered and held on behalf of the Planetas in his fiduciary capacity in violation of Rule 1.15(a) of the rules of professional conduct and Practice Book § 2.27(b). The court finds that he misappropriated over $38,000.00 of estate funds in violation of Rule 1.15(b) and 8.4(3) of the rules of professional conduct. His claimed fees were excessive and unreasonable in light of what the court finds to be a prolonged period of fraudulent, deceitful conduct against the Planetas, in violation of Rule 8.4(3) of the rules of professional conduct. Finally, he violated Rule 8.4(4) of the rules of professional conduct by failing to appear at a probate court hearing when subpoenaed and requiring that a capias be issued for his attendance before the probate court.

With Respect to Count Two of the Amended Petition: The court finds that the Respondent represented his sons, James A. McGee, III, and Sean P. McGee, a minor, as sellers of property in Old Saybrook at a closing that occurred on September 16, 1999 at which he presented a payoff statement with regard to the mortgage to Attorney Alexander Tighe, who represented the buyer. The Respondent signed an Indemnity and Undertaking, representing that he would pay off the existing mortgage on the subject property, but he failed to do so. In a related proceeding in the Westbrook probate court, the Respondent submitted a handwritten accounting to the court regarding the sale of property indicating that the mortgage had been paid, when in fact it had not.

***3** All of these activities led to the filing of a grievance complaint against the Respondent in connection with the September 16, 1999 closing by Attorney John Bennet, who had represented the holder of the mortgage in question. The Respondent neither answered the grievance complaint nor responded to a subpoena to appear at the October 10, 2001 grievance hearing scheduled in that matter.

By failing to pay off the existing mortgage as required as a part of a sale of the Old Saybrook property, the Respondent violated Rules 1.15(b) and 8.4(3) of the rules of professional conduct. His misrepresentation to the probate court in the handwritten accounting violated Rules 1.3(a)(1) and 8.4(1)(3)(4) of the rules of professional conduct. His failure to appear at the October 10, 2001 grievance hearing despite being served with a subpoena violated Rule 8.4(4) of the rules of professional conduct.

With Respect to Count Three of the Amended Petition: The evidence showed that Suzanne Edwards and Walter J. Adametz, Jr., are the owners of two pieces of property which they each inherited from their fathers. Mr. Adametz's father had once hired the Respondent to handle a boundary dispute in 1993. Subsequent to the

senior Adametz's death, Ms. Edwards and Mr. Adametz, Jr. retained the Respondent in August of 1997 to continue to handle the boundary dispute. They each paid him a retainer of $1,000.00. The Respondent routinely failed to return their phone calls, and when they did manage to speak to him, he gave them evasive answers about the progress of the litigation.

In fact, the Respondent failed to perform any work at all on their file, and in August of 2000, they terminated his services and requested the return of their file. The Respondent sent them a bill for what he claimed to be his legal services to date, an itemization that included claims for conferences he allegedly had with Edwards' and Adametz's fathers on dates after the date that each had died! The Respondent refused to turn over the file to their new attorney and failed to return their retainer.

On November 29, 2000, Edwards and Adametz filed a grievance complaint against the Respondent, who failed to file an answer and did not respond to a subpoena to appear at an October 10, 2001 hearing in connection with their grievance complaint.

The Respondent's failure to perform any work on the Edwards and Adametz file violated Rules 1.1, 1.2 and 1.3 of the rules of professional conduct. His failure to communicate adequately with them violated Rule 1.4 of the rules of professional conduct. His fee demand and acceptance of the retainer for which he performed no work violated Rule 1.5(a) of the rules of professional conduct, and his bill for services allegedly rendered, including the obviously fraudulent claims for meetings with dead people, violated Rule 8.4(1)(3) of the rules of professional conduct. His failure to turn over the file upon termination and to return the retainer violated Rule 1.16(d) of the rules of professional conduct. His failure to answer the grievance complaint violated Practice Book § 2 32(a)(1), and his failure to appear at the October 10, 2001 hearing despite being subpoenaed to do so violated Rule 8.4(4) of the rules of professional conduct.

***4** *With Respect to Count Four of the Amended Presentment:* The evidence showed that the Respondent represented the Estate of Duane D. Gesner in probate proceedings in Westbrook. In a statement in lieu of account, the Respondent had claimed $17,000.00 in attorneys fees which the probate court judge, Hon. Constance Vogell, found to be "egregious" and reduced to $5,000.00. She further ordered the Respondent to return $12,000.00 to the estate.

The Respondent did not reimburse the estate and failed to cooperate with the probate court's efforts to assure compliance with its order. This conduct violated Rules 3.4(3), 8.4(1) and 8.4(4) of the rules of professional conduct.

Based on the evidence outlined above, the court finds that the Petitioner has proved each and every one of the acts of misconduct and violations of the rules of professional conduct as alleged in the amended petition. The court must now address the appropriate sanctions to be imposed.

Any discussion of appropriate attorney discipline begins with recognition of the fact that a "presentment proceeding is neither a civil action nor a criminal proceeding, but is a proceeding *sui generis,* the object of which is not the punishment of the offender, but the protection of the court." *Statewide Grievance Committee v. Rozbicki,* 219 Conn. 473, 483 (1991), cert. denied, 502 U.S. 1094, 112 S.Ct. 1170, 117 L.Ed.2d 416 (1992). "An attorney as an officer of the court in the administration of justice, is continually accountable to it for the manner in which he exercises the privilege which has been accorded him. His admission is upon the implied condition that his continued enjoyment of the right conferred is dependent upon his remaining a fit and safe person to exercise it, so that when he, by misconduct in any capacity, discloses that he has become or is an unfit or unsafe person to be entrusted with the responsibilities and obligations of an attorney, his right to continue in the enjoyment of his professional privilege may and ought to be declared forfeited ... Therefore, [i]f a court disciplines an attorney, it does so not to mete out punishment to an offender, but [so] that the administration of justice may be safeguarded and the courts and the public protected from the misconduct or unfitness of those who are licensed to perform the important functions of the legal profession." *Doe v. Statewide Grievance Committee,* 240 Conn. 671, 684-85, 694 A.2d 1218 (1997), quoting *Massameno v. Statewide Grievance Committee,* 234 Conn. 539, 554-55, 663 A.2d 317 (1995). It is this court's understanding that this prohibition of "punishment" in disciplinary matters does not mean that courts may not impose sanctions that are painful or unpleasant. Rather, the prohibition means only that the purpose of any sanction imposed on an

attorney should not be mere "retribution," an element of punishment that is frequently equated, wrongly, in this court's view, with "punishment," which is generally considered to be an effort to serve five legitimate purposes: a) retribution, or the concept of "just desserts"; b) specific deterrence, the effort to assure that the individual offender does not recidivate; c) general deterrence, the effort to deter others from committing similar offenses by making an example of the individual offender; d) rehabilitation, the improvement of the offender's skills and morals so as to make him or her a better person; and e) incapacitation, the removal of an individual from a setting in which he or she could do harm. Specific and general deterrence, rehabilitation and incapacitation, to the extent that they are consistent with protection of the court and the public, are certainly appropriate considerations in professional discipline cases despite the fact that they are elements of "punishment."

***5** While they have not been officially adopted as rules by the Judges of the Superior Court, the American Bar Association's Standards for Imposing Lawyer Sanctions have frequently been utilized in determining the appropriate discipline to be imposed in presentment matters. Our Supreme Court has noted their usefulness in *Statewide Grievance Committee v. Spirer,* 247 Conn. 762, 782, 725 A.2d 948 (1999); see also *Statewide Grievance Committee v. Shluger,* 230 Conn. 668, 673 n. 10, 646 A.2d 781 (1994). The Standards provide useful guidance to a court that seeks to assure itself that all relevant considerations have been taken into account.

Section 3.0 of the Standards states that "[i]n imposing a sanction after a finding of lawyer misconduct, a court should consider the following factors: (a) the duty violated; (b) the lawyers mental state; (c) the potential or actual injury caused by the lawyer's misconduct; and (d) the existence of aggravating or mitigating factors." The duties violated by the respondent in this case are repeated and serious, involving lack of competence, diligence, fidelity to the client, and candor and honesty both toward the client and the court, most probably, in many instances, rising to the level of criminality.

Section 9.1 of the ABA Standards states that "[a]fter misconduct has been established, aggravating and mitigating circumstances may be considered in deciding what sanction to impose." The § 9.22 aggravating factors include: (a) prior disciplinary offenses; (b) dishonest or selfish motive; (c) a pattern of misconduct; (d) multiple offenses; (e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency; (f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process; (g) refusal to acknowledge wrongful nature of conduct; (h) vulnerability of victim; (i) substantial experience in the practice of law; (j) indifference to making restitution; (k) illegal conduct, including that involving the use of controlled substances.

The evidence established that the Respondent has already been suspended from the practice of law for three years, a significant act of discipline, and he has also been the subject of a reviewing committee reprimand. The court considers this prior disciplinary history to be a seriously aggravating factor in this case.

McGee's dishonest or selfish motive, evidenced by his overcharging, fraudulent billing practices and failure to return funds wrongfully withheld, is likewise an extremely serious aggravating factor.

The Petitioner has established that the instances that make up the four counts of this presentment constitute a pattern of misconduct, and the offenses have been numerous. The respondent's repeated failures to file timely answers to the numerous grievances against him, his failures to respond to subpoenas to grievance hearings, and his failure even to attend the September 29 hearing in this matter all constitute obstructions of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency.

***6** There has been no claim of the use of false evidence during the disciplinary process, so this is not found by the court to be an aggravating factor, albeit only because the respondent has not elected to participate in the grievance process in any way.

The Respondent has refused to acknowledge the wrongfulness of his conduct, a seriously aggravating factor. There has been evidence tending to show that the Planetas, at least, were especially vulnerable victims. This too is a seriously aggravating factor.

McGee was a member of the bat for ten years prior to his suspension, and surely, with that degree of experience, there is no excuse for his doing what he did. The court

therefore considers his substantial previous experience in the practice of law as an aggravating factor.

The respondent has only made only partial restitution, and that only when compelled to do so by the Probate court. This failure, and the fact that much of the conduct described by the witnesses in this case is not only unethical but also illegal, are also seriously aggravating factors.

The § 9.32 mitigating factors include: (a) absence of a prior disciplinary record; (b) absence of a dishonest or selfish motive; (c) personal or emotional problems; (d) timely good faith effort to make restitution or to rectify consequences of misconduct; (e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings; (f) inexperience in the practice of law; (g) character or reputation; (h) physical disability; (i) mental disability or chemical dependency including alcoholism or drug abuse when: (1) there is medical evidence that the respondent is affected by a chemical dependency or mental disability; (2) the chemical dependency or mental disability caused the misconduct; (3) the respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of a successful rehabilitation; and (4) the recovery arrested the misconduct and recurrence of that misconduct is unlikely; (j) delay in disciplinary proceedings; (k) imposition of other penalties or sanctions; (l) remorse; (m) remoteness of prior offenses.

The Respondent, who did not participate all in these proceedings, of course presented no evidence on which the court could find the existence of a mitigating factor. The court inquired of counsel for the Petitioner as to whether she was aware of any mitigating factors, and she reported that she was not. The court therefore finds that none of the mitigating factors described in the Standards have been established.

Section 4.11 of the ABA Standards indicates that disbarment "is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client."

Section 4.41 of the ABA Standards indicates that disbarment "is generally appropriate when: ... (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client. (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client."

***7** Section 4.51 of the ABA Standards indicates that disbarment "is generally appropriate when a lawyer's course of conduct demonstrates that the lawyer does not understand the most fundamental legal doctrines or procedures, and the lawyer's conduct causes injury or potential injury to a client."

Section 4.61 of the ABA Standards indicates that disbarment "is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to a client."

Section 5.11 of the ABA Standards indicates that disbarment "is generally appropriate when: ... (b) a lawyer engages in ... intentional conduct involving dishonest, fraud, deceit or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice."

Section 6.11 of the ABA Standards indicates that disbarment "is generally appropriate when a lawyer, with intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding."

Section 6.21 of the ABA Standards indicates that disbarment "is generally appropriate when a lawyer knowingly violates a court order with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a party, or causes serious or potentially serious interference with a legal proceeding."

We know that the purposes of the professional discipline process include safeguarding the administration of justice and protecting the public and the courts. *Doe v. Statewide Grievance Committee, supra.* We also know, based on the discussion of "punishment" earlier in this Memorandum of Decision, that mere retribution is not among the legitimate goals of this process, nor, in the absence of any mitigating circumstances, does the court sees any possible role for rehabilitation in its ultimate sanction. In this court's view, however, deterrence, both specific and general, and incapacitation are all appropriate

considerations in the fashioning of the disposition in this case, because all of these elements of punishment have the capacity to further the goals of protection of the public and the courts.

This court has no doubt that for this particular attorney, disbarment is the only remedy that will specifically deter him from future misconduct. Additionally, despite this court's frequently expressed skepticism about the ability of sentences in criminal cases to deter others from similar acts (See, e.g. *Statewide Grievance Committee v. Palmieri,* (CV 02-0472045 Judicial District of New Haven, February 25, 2003), there is some reason for hope that the extreme sanction of disbarment in this case will have some deterrent effect on other attorneys who might be tempted to engage in similar conduct. Although general deterrence is not the primary motivation behind this disposition, it is among the motivations, and a firm sanction is more likely to have such an effect than a lenient one.

***8** In the final analysis, the primary purpose to be served by the discipline to be imposed in this case is incapacitation. There are some lawyers who should never be allowed to practice law again and whose total removal from the profession is the only appropriate sanction. James A. McGee, Jr. has been clearly and convincingly shown to be such a lawyer.

For all of the above reasons, the court orders that the Respondent, James A. McGee, Jr., be disbarred. As the Respondent has been suspended from the practice of law for the preceding three years, with an attorney already appointed to inventory the Respondent's files and protect the interests of his clients, there is no need for a trustee to be appointed in connection with this proceeding.

The court further orders that a copy of this memorandum of decision be forwarded to the State's Attorney for the Middlesex Judicial District for purposes of his consideration of possible criminal prosecution of the Respondent, and that notice of the Respondent's disbarment be published in the Connecticut Law Journal.

All Citations

Not Reported in A.2d, 2003 WL 22333085

Hankerson v. Vickery,
No. 15-0517, slip op. (Conn. Statewide Grievance Comm. Apr. 22, 2016)

STATEWIDE GRIEVANCE COMMITTEE

Rodney Hankerson Complainant	:	
vs.	:	Grievance Complaint #15-0517
Jennifer Vickery Respondent	:	

DECISION

Pursuant to Practice Book §2-35, the undersigned, duly-appointed reviewing committee of the Statewide Grievance Committee, conducted a hearing at the Superior Court, 1 Lafayette Circle, Bridgeport, Connecticut on January 14, 2016. The hearing addressed the record of the complaint filed on August 12, 2015, and the probable cause determination rendered by the New Haven Judicial District Grievance Panel for the towns of Bethany, New Haven and Woodbridge on November 12, 2015, finding that there existed probable cause that the Respondent violated Rules 1.1, 1.3, 1.4, 1.15, and 8.1(1), (2) and (4) of the Rules of Professional Conduct as well as Practice Book §§2-27 and 2-32.

Notice of the January 14, 2016 hearing was mailed to the Complainant, to the Respondent and to the Office of the Chief Disciplinary Counsel on December 7, 2015. Pursuant to Practice Book §2-35(d), First Assistant Chief Disciplinary Counsel Suzanne Sutton pursued the matter before this reviewing committee. The Complainant appeared and testified. The Respondent did not appear. One exhibit was admitted into evidence.

Reviewing committee member Ms. Judith Freedman was not available for the January 14, 2016 hearing. The First Assistant Chief Disciplinary Counsel waived the participation of Ms. Freedman in this matter and agreed to have the undersigned render this decision.

This reviewing committee finds the following facts by clear and convincing evidence:

The Complainant has been convicted of murder. He took an appeal of the decision and the conviction was upheld. Thereafter, he filed a writ of habeas corpus which was denied by the habeas trial court. The Respondent was assigned to take an appeal of the denial of the petition for writ of habeas corpus. She filed the appeal and brief. The Appellate Court considered two issues briefed by the Respondent. One of the issues raised on appeal was not initially raised before the habeas court and was dismissed on that ground.

During the representation, the Respondent only communicated with the Complainant three times. She failed to appear for one scheduled visit at the jail; and failed to schedule a promised visit. She did not respond to the Complainant's phone calls. She failed to address the issues he wanted to appeal or communicate with him as to why those issues should not be addressed in the appeal. The Respondent did not give the Complainant an opportunity to read her brief and offer comments or suggestions prior to it being filed. She did not provide

him with a copy of the brief. The Respondent only showed the Complainant the brief shortly before oral argument and told him she needed it back because it was her only copy. The Respondent admits that she gave her copy of the State's brief to the Complainant and then visited him at the jail after oral argument in order to collect the brief. The Respondent did not tell him the decision when it was issued by the Appellate Court in May of 2014. The Complainant only found out about the decision from subsequent counsel. In October of 2014, the Complainant's subsequent counsel, Attorney Thomas Piscatelli, told the Complainant that he was unable to obtain a copy of the appellate file from the Respondent despite daily attempts to reach her. The Respondent eventually turned over the file, but failed to turn over the file to successor counsel in a timely manner.

The Respondent was admitted to the practice of law in Connecticut on September 5, 2000. The Respondent has not completed her annual attorney registration since June 16, 2014. The Respondent is currently administratively suspended for failure to pay the Client Security Fund fee. The Respondent did not answer this grievance complaint. The Respondent did not register in response to this grievance complaint.

The Respondent did send an e-mail to the Disciplinary Counsel indicating that she was aware of the hearing, but was not attending because she had work that day. She did not file a motion for continuance. The Respondent is not practicing law at this time.

This reviewing committee also considered the following:

The Respondent has been criticized in the past by the Statewide Grievance Committee for not answering a grievance complaint. Williams v. Vickery, Grievance Complaint #10-0458 (December 3, 2010 dismissal).

The Respondent was given notice of the charges against her, an opportunity to be heard in her own defense and an opportunity to call witnesses and cross-examine the evidence and testimony in the record. She declined to do so by not answering the grievance complaint or appearing at the hearing.

We do not find clear and convincing evidence that the Respondent violated Rule 1.1 of the Rules of Professional Conduct. We take judicial notice of the decision in State v. Hankerson, 150 Conn. App. 362 (2014). It is not clear from the record that there were other issues that should have been raised by the Respondent or that the issues raised by the Respondent were insufficiently briefed. The Appellate Court decided the appeal on the merits.

We do find clear and convincing evidence that the Respondent violated Rules 1.3 and 1.4 of the Rules of Professional Conduct. The record is void of any written communication from the Respondent to the Complainant. She also missed a scheduled visit to the jail and failed to reschedule a promised visit. The Complainant testified that the Respondent only

visited him three times, that she did not listen to the appellate issues he wanted to pursue and that she failed to explain to him why her strategy should be pursued or why his appellate issues should not be pursued. The record shows that the Respondent failed to send the Complainant the State's brief and a draft of her brief in a timely manner so that he could offer comment, criticism, or suggestions to her about the brief. While the Respondent was responsible for identifying and pursuing the best appellate issues for the Complainant, she had a duty to pursue those issues diligently and to communicate the process to the Complainant. She also had a duty to notify the Complainant when he lost the appeal. She did not do so. Further, she failed to communicate in a timely manner with Attorney Piscatelli about turning over the appellate file, despite his daily attempts to contact her. Accordingly, we find that the Respondent violated Rules 1.3 and 1.4 of the Rules of Professional Conduct.

We do not find clear and convincing evidence that the Respondent violated Rule 1.15 of the Rules of Professional Conduct. There is evidence in the record that the Complainant ultimately received his file. While we find that the Respondent failed to turn over the file in a timely manner to subsequent counsel, there is no evidence that the file was not safeguarded during the period of delay, nor is there evidence that anything was missing from the file when it was returned; nor is there evidence that he was prejudiced by the delay.

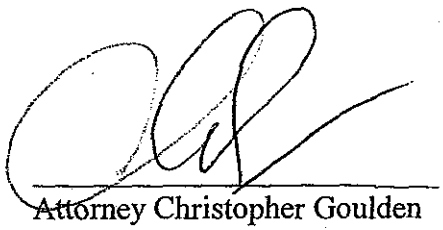
We do find clear and convincing evidence that the Respondent violated Rules 8.1(2) of the Rules of Professional Conduct and Practice Book §2-32(a)(1) for failing to answer the grievance complaint. It is aggravated by the fact that the Respondent was criticized by the committee in the past for failing to answer a grievance complaint. The Respondent offered no satisfactory explanation to this committee for why she failed to answer this grievance complaint.

We find clear and convincing evidence that the Respondent engaged in misconduct in violation of Practice Book §2-27(d) by failing to register. We do not see the applicability of Rule 8.1(1) and (4) and do not find clear and convincing evidence that this was violated.

Pursuant to Practice Book §2-37, we reprimand the Respondent for violating Rules 1.3, 1.4, 8.1(2) and Practice Book §§2-27(d) and 2-32(a)(1). In arriving at our decision, we considered the Respondent's cavalier attitude towards her representation of the Complainant as well as the grievance process and the disciplinary authorities. Failure to cooperate with disciplinary authorities is an aggravating factor in determining the appropriate level of discipline.

(D)
EMR

DECISION DATE: 4-22-16



Attorney Christopher Goulden

David Slossberg

Attorney David Slossberg

Messina v. Cohen,
No. 14-437, slip op. (Conn. Statewide Grievance Comm. Feb. 13, 2015)

STATEWIDE GRIEVANCE COMMITTEE

Michael Messina
Complainant :

vs. : Grievance Complaint #14-0437

Mitchell A. Cohen
Respondent :

DECISION

Pursuant to Practice Book § 2-35, the undersigned, duly-appointed reviewing committee of the Statewide Grievance Committee, conducted a hearing at the Superior Court, 1 Lafayette Circle, Bridgeport, Connecticut on January 8, 2015. The hearing addressed the record of the complaint filed on June 6, 2014, and the probable cause determination filed by the Hartford Judicial District Grievance Panel for Geographical Area 13 and the town of Hartford on August 29, 2014, finding that there existed probable cause that the Respondent violated Rule 1.1 of the Rules of Professional Conduct. The hearing also addressed the additional allegations of misconduct filed by the Disciplinary Counsel on November 7, 2014, finding that there existed probable cause that the Respondent violated Rules 1.3, 1.4(a)(2), (3) and (4), 1.15(e), 1.5(b) and 8.4(4) of the Rules of Professional Conduct.

This matter was originally scheduled for a hearing on November 13, 2014, but was continued because the Disciplinary Counsel filed additional allegations of misconduct on November 7, 2014. The matter was thereafter scheduled for a hearing on January 8, 2015. Notice of the January 8, 2015 hearing was mailed to the Complainant, to the Respondent and to the Office of the Chief Disciplinary Counsel on December 1, 2014. Pursuant to Practice Book §2-35(d), Assistant Disciplinary Counsel Karyl Carrasquilla pursued the matter before this reviewing committee. The Complainant and the Respondent appeared at the hearing and testified. The Complainant was represented in the matter by Attorney Brennen Maki.

Reviewing committee member Attorney David A. Slossberg was not available for the hearing. Both the Disciplinary Counsel and the Respondent, however, waived the participation of Attorney Slossberg in this matter and agreed to have the undersigned render this decision.

This reviewing committee finds the following facts by clear and convincing evidence:

In April of 2013, the Complainant was sued in his individual and business capacity. The Complainant retained the Respondent to represent him in the lawsuit and paid the Respondent $1,500. The Respondent filed an appearance on behalf of the Complainant on April 25, 2013. Thereafter, the Respondent failed to take any action, resulting in a default judgment being entered against the Complainant on November 4, 2013 in the amount of $55,000. The Complainant

contacted the Respondent after receiving notice of the default judgment from the court. The Respondent told the Complainant that they had ninety days to reopen the judgment. The Respondent, however, failed to take any action to reopen the judgment.

In April of 2014, the Complainant retained Attorney Brennen Maki to file a malpractice action against the Respondent. Attorney Maki sent a letter to the Respondent on April 2, 2014, requesting a copy of the Complainant's file. Attorney Maki sent a second request to the Respondent on April 21, 2014. Failing to receive any response from the Respondent, Attorney Maki sent a final request to the Respondent on May 14, 2014. Attorney Maki demanded that the Respondent produce the file by May 23, 2014. The Respondent did not respond to Attorney Maki's requests.

This reviewing committee also considered the following:

The Respondent testified that sometime during the summer of 2013, he misplaced the Complainant's file and lost track of the Complainant's case. The Respondent acknowledged that he received the notices sent to him by the court, but did not calendar any of those dates. The Respondent testified that when he received the notices, he put them aside, waiting for the Complainant's file to be found. The Respondent stated that he could not file a motion to reopen because he had no good faith basis to do so. The Respondent acknowledged, however, that he never advised the Complainant of this fact.

The Respondent apologized for his actions and stated that he was willing to help the Complainant file for bankruptcy free of charge. The Respondent acknowledged receiving Attorney Maki's requests for the file. The Respondent maintained that he did not respond to those requests because he was searching for the Complainant's file. The Respondent has found portions of the Complainant's file, which consists mostly of pleadings, and is prepared to provide them to Attorney Maki.

The Respondent's disciplinary history indicates that he was reprimanded by a reviewing committee of the Statewide Grievance Committee in May of 2007 and September of 2012. The Disciplinary Counsel advised this reviewing committee at the hearing that the Complainant had received a fee agreement from the Respondent and therefore she was withdrawing the additional allegation of misconduct alleging that the Respondent violated Rule 1.5(b) of the Rules of Professional Conduct.

This reviewing committee concludes by clear and convincing evidence that the Respondent engaged in unethical conduct. The facts in this case are undisputed. The Respondent acknowledged losing the Complainant's file and failing to take any action in the Complainant's case, resulting in a default judgment being entered against the Complainant. We find that the Respondent failed to provide the Complainant with competent and diligent representation, in violation of Rules 1.1 and 1.3 of the Rules of Professional Conduct. We further conclude that the Respondent failed to

adequately communicate with the Complainant. The Respondent failed to reasonably consult with the Complainant about the means to be used to accomplish the Complainant's objectives, by failing to consult with the Complainant about how to proceed after the default judgment was entered, in violation of Rule 1.4(a)(2) of the Rules of Professional Conduct. The Respondent also failed to keep the Complainant reasonably informed regarding the status of his case by failing to advise the Complainant about the hearing in damages and the default judgment, in violation of Rule 1.4(a)(3) of the Rules of Professional Conduct. We also find that the Respondent's failure to respond to Attorney Maki's repeated requests for the Complainant's file constitutes a violation of Rule 1.4(a)(4) of the Rules of Professional Conduct.

This reviewing committee further concludes that the Respondent's failure to provide the Complainant with a copy of his file, despite repeated requests from his counsel, constitutes a violation of Rule 1.15(e) of the Rules of Professional Conduct. Lastly, we find that the Respondent's conduct in this matter was prejudicial to the administration of justice, in violation of Rule 8.4(4) of the Rules of Professional Conduct.

The Disciplinary Counsel acknowledged that a written fee agreement was provided to the Complainant. Accordingly, we conclude that the Respondent did not violate Rule 1.5(b) of the Rules of Professional Conduct.

This reviewing committee concludes that the Respondent's violations of Rules 1.1, 1.3, 1.4(a)(2), (3) and (4), 1.15(e) and 8.4(4) of the Rules of Professional Conduct warrant a presentment. Accordingly, we direct Disciplinary Counsel to file a presentment against the Respondent in the Superior Court for the imposition of whatever discipline the court may deem appropriate.

DECISION DATE: 2/13/15

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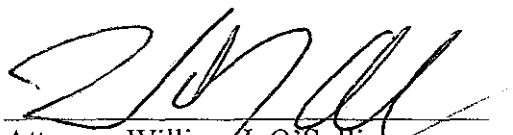

Attorney William J. O'Sullivan

Ms. Judith Freedman

Barron v. Jacobs,
No. 12-0211, slip op. (Conn. Statewide Grievance Comm. Oct. 18, 2012)

STATEWIDE GRIEVANCE COMMITTEE

Linda Barron
Complainant :

vs. : Grievance Complaint #12-0211

Stephen D. Jacobs
Respondent :

DECISION

Pursuant to Practice Book §2-35, the undersigned, duly-appointed reviewing committee of the Statewide Grievance Committee, conducted a hearing at the Superior Court, 300 Grand Street, Waterbury, Connecticut on September 4, 2012. The hearing addressed the record of the complaint filed on March 16, 2012, and the probable cause determination filed by the New Haven Judicial District Grievance Panel for Geographical Area 7 and the towns of Branford, East Haven, Guilford, Madison and North Branford on June 21, 2012, finding that there existed probable cause that the Respondent violated Rules 1.1, 1.3, 1.4 and 8.1(2) of the Rules of Professional Conduct and Practice Book §2-32(a)(1).

Notice of the hearing was mailed to the Complainant, to the Respondent and to the Office of the Chief Disciplinary Counsel on July 30, 2012. Pursuant to Practice Book §2-35(d), Assistant Disciplinary Counsel Karyl Carrasquilla pursued the matter before this reviewing committee. The Complaint appeared at the hearing and testified. The Respondent did not appear at the hearing. One exhibit was admitted into evidence.

Reviewing Committee member Joan Gill was unavailable for the hearing. The Disciplinary Counsel, however, waived the participation of Ms. Gill in this matter and agreed to have the undersigned render this decision.

This reviewing committee finds the following facts by clear and convincing evidence:

The Complainant retained the Respondent in 2002 to represent her in a medical malpractice action. In May of 2011, the Complainant moved into an apartment located in the Respondent's office building at 71 Caitlin Street in Meriden. The Respondent located the apartment for the Complainant and made arrangements with the leasing company, Nubreed Ent., Inc., to pay the Complainant's rent. The Respondent paid the Complainant's monthly rent of $750 from May, 2011 to December, 2011. The initial check for $1,400 for the first month's rent and security deposit was disbursed from an account for Jacobs and Jacobs, PC. The remaining checks were disbursed from the Respondent's personal checking account. After December, 2011, the Respondent stopped paying the Complainant's rent. The leasing company tried to reach the Respondent on various occasions, but was unable to do so. Proceedings to evict the Complainant began in June of 2012 and the

Complainant was evicted in August of 2012.

The Complainant last spoke to the Respondent in approximately October of 2011 when she noticed that he was moving out of his office. The Complainant spoke with one of her neighbors who also had retained the Respondent and learned that she had received a letter from the Respondent indicating that the Respondent was retiring and that another lawyer would be handling the case. The Complainant approached the Respondent regarding her case, since she did not receive a letter from the Respondent. The Respondent advised her that he would continue to handle her case and that her case would be in court by Christmas. That was the last time the Complainant saw or spoke with the Respondent. The Complainant has left numerous messages for the Respondent, but the Respondent has never returned her calls or written to her regarding her case. The Complainant does not know the status of her case and was never provided any documentation from the Respondent regarding her case.

This reviewing committee also considered the following:

Disciplinary Counsel advised this reviewing committee that she reviewed the Judicial Branch Case Detail website and could not find that the Respondent filed a case on the Complainant's behalf.

On December 30, 2011, the Respondent filed a Notice of Retirement pursuant to Practice Book §2-55. Thereafter, on January 3, 2012, the 2012 annual Attorney Registration Form was sent to the Respondent. The Respondent has not filed the 2012 Attorney Registration Form nor did he update his information when he retired in December of 2011. The Respondent last registered on January 5, 2011, listing an office address of 71 Caitlin Street, P.O. Box 193, Meriden, Connecticut and a home address of 11 Bliss Road, Warren, Connecticut.

The instant grievance complaint was sent to the Respondent by certified mail on March 21, 2012 to his registered office address in Meriden. On April 20, 2012, the grievance complaint was returned to Statewide Grievance Committee as "unclaimed; unable to forward." Thereafter, on April 23, 2012, the grievance complaint was sent to the Respondent by regular mail to his registered home address in Warren and was not returned. On May 4, 2012, Grievance Panel counsel sent a letter to the Respondent at his office address in Meriden requesting that he immediately file a response to the grievance complaint. The Respondent did not file a response as directed.

On July 30, 2012, a hearing notice was sent to the Respondent for a September 4, 2012 hearing. The notice was sent to the Respondent's office address in Meriden and was not returned. On August 23, 2012, the notice was also forwarded to the Respondent's home address in Warren. On August 27, 2012 this notice was returned by the post office with a forwarding address in Fort Myers, Florida. On August 30, 2012, the Respondent was sent a notice advising that the time of the September 4, 2012 hearing had been changed. The notice was sent to the Respondent's Florida

address and was not returned.

This reviewing committee concludes by clear and convincing evidence that the Respondent engaged in unethical conduct. The uncontroverted testimony of the Complainant establishes that the Respondent was retained in 2002 to file a malpractice action on behalf of the Complainant. The Complainant has never been provided with any documentation to evidence that the Respondent actually filed suit on her behalf. Furthermore, Disciplinary Counsel was unable to verify that an action had been filed. It has been approximately ten years since the Complainant retained the Respondent. We conclude by clear and convincing evidence that the Respondent failed to file a malpractice action on behalf of the Complainant and that this conduct constitutes a lack of diligence in violation of Rule 1.3 of the Rules of Professional Conduct. We cannot conclude, however, that the Respondent's failure to file the malpractice action was due to the Respondent's lack of competence in violation of Rule 1.1 of the Rules of Professional Conduct.

The record further supports a finding by clear and convincing evidence that the Respondent failed to adequately communicate with the Complainant. The Respondent failed to provide the Complainant with any documentation or information regarding the Complainant's malpractice action during the ten years that he represented her. The Complainant has no knowledge of the status of her case and the Respondent has failed to return her telephone calls. Furthermore, the Respondent has retired and moved and failed to provide the Complainant with any contact information. We conclude that the Respondent's actions violate Rule 1.4(a)(1), (2), (3) and (4) and 1.4(b) of the Rules of Professional Conduct.

This reviewing committee finds that the Respondent has also violated Rule 8.1(2) of the Rules of Professional Conduct and Practice Book §2-32(a)(1) by failing to respond to the grievance complaint. The grievance complaint was sent to the Respondent at both his registered office and home addresses. Although, the complaint sent to the Respondent's office by certified mail was returned, the complaint sent to his home address was not returned. The Respondent, however, did not file an answer to the grievance complaint. Furthermore, it is the Respondent's responsibility, even after he retires, to update his attorney registration with accurate mailing addresses. Accordingly, we conclude that the Respondent failed to establish that his failure to respond to the grievance complaint was for good cause and conclude that his actions violate Rule 8.1(2) of the Rules of Professional Conduct and Practice Book §2-32(a)(1).

This reviewing committee concludes that the Respondent's conduct warrants a presentment. In addition to the violations cited above, this reviewing committee concludes by clear and convincing evidence that the Respondent's conduct also violates Rules 1.8(e) and 1.16(d) of the Rules of Professional Conduct and Practice Book §2-27(d). We conclude that the Respondent provided financial assistance to the Complainant by paying her rent while representing her in the malpractice action in violation of Rule 1.8(e) of the Rules of Professional Conduct. We also conclude that the

Respondent terminated his representation of Complainant and failed to comply with the requirements of Rule 1.16(d) of the Rules of Professional Conduct. The Respondent retired from the practice of law on December 30, 2011. As of that date, the Respondent was no longer authorized to practice law and could not continue to represent the Complainant in the malpractice action. The Respondent, however, did not take any steps to protect the Complainant's interest upon his termination. The Respondent did not advise the Complainant of his retirement, provide her with a copy of her file or give her an opportunity retain new counsel, all in violation of Rule 1.16(d) of the Rules of Professional Conduct. In addition, we conclude that the Respondent failed to update his Attorney Registration Form when he retired in December, 2011 and failed to file the 2012 annual Attorney Registration Form with the Statewide Grievance Committee in violation of Practice Book §2-27(d).

Accordingly, we direct Disciplinary Counsel to file a presentment against the Respondent in the Superior Court for the imposition of whatever discipline the Court may deem appropriate for the Respondent's violations of Rules 1.3, 1.4(a)(1), (2), (3) and (4), 1.4(b) and 8.1(2) of the Rules of Professional Conduct and Practice Book §2-32(a)(1). Since the presentment will be a trial de novo, we further direct Disciplinary Counsel to include the additional violations of Rules1.8(e) and 1.16(d) of the Rules of Professional Conduct and Practice Book §2-27(d) found by this reviewing committee.

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jf

DECISION DATE: 10/19/12

Attorney David I. Channing

Evelyn Gryk Frolich

Attorney Evelyn Gryk Frolich

Mongillo v. Goldstein,
No. 07-0856, slip op. (Conn. Statewide Grievance Comm. Feb. 22, 2008)

STATEWIDE GRIEVANCE COMMITTEE

Lynn Santos Mongillo Complainant	:	
vs.	:	Grievance Complaint #07-0856
Stanley Goldstein Respondent	:	

DECISION

Pursuant to Practice Book §2-35, the undersigned, duly-appointed reviewing committee of the Statewide Grievance Committee, conducted a hearing at the Superior Court, 80 Washington Street, Hartford, Connecticut on January 10, 2008. The hearing addressed the record of the complaint filed on September 4, 2007, and the probable cause determination rendered by the Fairfield Judicial District Grievance Panel ("Grievance Panel") on November 15, 2007, finding that there existed probable cause that the Respondent violated Rules 1.1, 1.3 and 1.4 of the Rules of Professional Conduct.

Notice of the January 10, 2008 hearing was mailed to the Complainant, to the Respondent and to the Office of the Chief Disciplinary Counsel on December 4, 2007. Pursuant to Practice Book §2-35(d), Chief Disciplinary Counsel Mark A. Dubois pursued the matter before this reviewing committee. The Complainant and the Respondent appeared and testified. One exhibit was admitted into evidence. Reviewing committee member Dr. Frank Regan was not available for the hearing. Chief Disciplinary Counsel and the Respondent waived the participation of Dr. Regan in this matter and agreed to have the undersigned render this decision.

This reviewing committee finds the following facts by clear and convincing evidence:

The complainant was involved in a motor vehicle accident on January 8, 2003. She hired the law firm of Palmesi, Kaufman, Goldstein & Petrucelli, P.C. to handle her motor vehicle accident. During the same time period, the firm also represented the Complainant and her husband in a slip and fall case which was successfully resolved in May of 2006.

The Complainant's files were initially handled by Attorney Ralph Palmesi, who died in 2003. The Respondent's firm received a letter dated May 24, 2004 from a claims examiner at GEICO Direct asking for information necessary to evaluate the Complainant's motor vehicle claim. In a letter dated June 2, 2004, the Respondent responded to the claims examiner and stated that "my client is scheduled for a final evaluation the middle of June, 2004. As soon as I am in receipt of the final bill and report same will be forwarded to [the claims examiner's] attention." The claims examiner from GEICO Direct wrote to the Respondent's firm again on October 14, 2004 and December 8, 2004 requesting the information to properly evaluate the Complainant's motor vehicle claim. The law firm of

Palmesi, Kaufman, Goldstein, & Petrucelli, P.C. did not file a lawsuit before January 8, 2005, two years from the date the injury occurred.

In the spring of 2006, the Respondent suggested to the Complainant that he would transfer her cases to another attorney. In May of 2006, the Respondent told the Complainant that he had decided to handle her cases. The slip and fall case was settled. On May 8, 2006, the Complainant sent the Respondent a letter telling him that she wished to pick up her motor vehicle accident file on May 16, 2006. The Respondent did not give the Complainant her file. Instead, he met with her and convinced her to let him handle the file and promised to keep her updated on the file, which he claimed was in "the beginning stages." He did not advise the Complainant that a lawsuit had not been filed and he did not advise the complainant that the statute of limitations had run on her claim.

On July 14, 2006, the Complainant sent the Respondent a letter requesting he return her file. The Complainant hired Attorney Paul Ganim to handle her personal injury case. Attorney Ganim initially requested the Complainant's file from the Respondent in October of 2006. The Respondent indicated he would send the file to Attorney Ganim, but in May of 2007, the Respondent still had not transferred the file to the Complainant's new attorney. Nor did the Respondent advise the Complainant that a lawsuit had not been filed and the lawsuit was now barred by the statute of limitations. In August of 2007, the Complainant filed this grievance complaint against the Respondent. In October of 2007, the Respondent represented to the Grievance Panel that he was not aware that the Complainant had two files with his office. He stated, "as a result of my failure to understand that there was a second file, the second file was not properly addressed. I will immediately explain same to the Complainant's present attorney and do whatever is appropriate to resolve this matter." The Respondent failed to tell the Grievance Panel that the Complainant's claim was barred by the statute of limitations.

The Respondent did not contact the Complainant's new attorney until January 2, 2008. At that time, he scheduled a meeting to produce the Complainant's file for the Complainant's new attorney and discuss the file.

This reviewing committee also considered the following:

In his answer, the Respondent claimed that he did not understand the Complainant had two files in his office. The Respondent has one prior reprimand.

This reviewing committee concludes by clear and convincing evidence that the Respondent violated the Rules of Professional Conduct. We consider each Rule for which probable cause was found in turn.

Rule 1.1:

Rule 1.1 of the Rules of Professional Conduct states: "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."

Pursuant to Connecticut General Statutes §52-584, an action should have been brought within two years from the date the injury occurred or was discovered. In this case, a competent attorney would have known that a lawsuit should have been filed by January 8, 2005 to avoid the defense that the lawsuit was barred by the statute of limitations. The evidence shows that on or before June 2, 2004 the Respondent had notice of the Complainant's file and her date of loss because he wrote a letter dated June 2, 2004 to the claims examiner discussing the Complainant's file. In the same letter, the Respondent took responsibility for the file when he acknowledged to the claims examiner "my client is scheduled for a final evaluation the middle of June, 2004. As soon as I am in receipt of the final bill and report same will be forwarded to [the claims examiner's] attention." Although the Respondent was aware of the file and took responsibility for it prior to the claim being barred by the statute of limitations, he failed to act with the thoroughness or preparation necessary to pursue the matter. Because the Respondent failed to investigate the Complainant's matter, file a lawsuit or settle the case during the proper time period, the Complainant's claim was barred by the statute of limitations. For all the foregoing reasons, we find by clear and convincing evidence that the Respondent violated Rule 1.1 by failing to provide the Complainant with competent representation.

Rule 1.3:

Rule 1.3 of the Rules of Professional Conduct states: "A lawyer shall act with reasonable diligence and promptness in representing the client."

The evidence shows that the Respondent had notice of and was responsible for this file on or before June 2, 2004. The Complainant and the claims examiner made repeated attempts to discuss the Complainant's file with the Respondent. The Respondent represented to the claims examiner that his client was going for her final evaluation in June of 2004. The Respondent failed to provide the claims examiner with the information necessary to process the insurance claim. The Respondent failed to file a lawsuit or settle the case before the claim was barred by the statute of limitations. For all the foregoing reasons, we find by clear and convincing evidence that the Respondent violated Rule 1.3 by failing to act with reasonable diligence and promptness in representing the Complainant.

Rule 1.4:

Prior to 2007, Rule 1.4 stated:

> (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
> (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

The evidence shows the Complainant's claim was barred by the statute of limitations after January 8, 2005. The Respondent met with the Complainant and received phone calls and letters from the Complainant after the claim had expired. The Respondent never told the Complainant that the firm had failed to file a lawsuit nor did he tell her that it was now too late to file a lawsuit. The Respondent never told the Complainant that he or the firm had potentially committed legal malpractice and that she should consider hiring another lawyer. The Respondent ignored the Complainant's reasonable requests for the return of her file and the status of her file. The Respondent promised to provide Complainant's new counsel with her file and then failed to provide the file. The Respondent repeatedly delayed the release of this information even after the Complainant had filed a grievance complaint. The Complainant initially requested her file in May of 2006. She did not receive the file until January of 2008.

The Respondent failed to keep the Complainant reasonably informed about the status of her matter, he failed to respond to reasonable requests for information, and he failed to inform the Complainant that the statute of limitations had expired and he had potentially committed legal malpractice by failing to file the lawsuit. The Respondent further exacerbated this situation by failing to return the Complainant's file to her and suggesting to the Grievance Panel in his answer that he had no knowledge of this file until he received the grievance complaint. For all of the foregoing reasons, we find by clear and convincing evidence that the Respondent violated Rule 1.4 by failing to adequately communicate with his client.

Conclusion:

Since we conclude that the Respondent violated Rules 1.1, 1.3, and 1.4 of the Rules of Professional Conduct, we direct the Disciplinary Counsel to file a presentment against the Respondent in the Superior Court for the imposition of whatever discipline is deemed appropriate.

Since a presentment is a de novo proceeding, we further direct the Disciplinary Counsel to include a charge in the presentment that the Respondent violated Rule 1.16(d) of the Rules of Professional Conduct by failing to return the client's file after his representation had been terminated and Rule 8.1(1) of the Rules of Professional Conduct for knowingly making a false statement to the Grievance Panel that he was not even aware of the Complainant's second file prior to the grievance complaint being filed.

(D)
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DECISION DATE: 2/22/08

Attorney Geoffrey Naab

Attorney Tracie Molinaro

McNichol v. Kelly,
No.07-047 (Conn. Statewide Grievance Comm. Feb. 15, 2008)

STATEWIDE GRIEVANCE COMMITTEE

David McNichol Complainant	:	
vs.	:	Grievance Complaint #07-0471
Richard T. Kelly Respondent	:	

DECISION

Pursuant to Practice Book §2-35, the undersigned, duly-appointed reviewing committee of the Statewide Grievance Committee, conducted a hearing at the Superior Court, 80 Washington Street, Hartford, Connecticut on November 8, 2007. The hearing addressed the record of the complaint filed on May 16, 2007, and the probable cause determination rendered by the New Haven Judicial District Grievance Panel for Geographical Area 7 and the Towns of Branford, East Haven, Guilford, Madison & North Branford on June 21, 2007 finding that there existed probable cause that the Respondent violated Rule 1.4(a) of the Rules of Professional Conduct.

Notice of the November 8, 2007 hearing was mailed to the Complainant, to the Respondent and to the Office of the Chief Disciplinary Counsel on October 1, 2007. Pursuant to Practice Book §2-35(d), Assistant Disciplinary Counsel Patricia A. King pursued the matter before this reviewing committee. The Respondent was represented by Attorney Raymond J. Plouffe, Jr. The Complainant and the Respondent appeared and testified. No exhibits were admitted into evidence. Reviewing committee member Dr. Frank Regan was not available for the hearing. Assistant Disciplinary Counsel and the Respondent waived the participation of Dr. Regan in this matter and agreed to have the undersigned render this decision.

This reviewing committee finds the following facts by clear and convincing evidence:

The Respondent represented the Complainant as a special public defender. He and another public defender helped to negotiate a plea bargain with the State's Attorneys in separate courts for two separate criminal matters. In the matter he handled, the Respondent negotiated a concurrent sentence for the Complainant. In October of 2006, after the Complainant was incarcerated, he wrote to the Respondent requesting the answer to four questions. The Respondent did not respond to the Complainant. The Complainant wrote to the Respondent in November of 2006 asking for a copy of his file. The Respondent did not respond to the Complainant. In April of 2007, the Complainant filed a grievance complaint against the Respondent. The Respondent then sent the Complainant his entire file except for certain restricted documents. The Respondent also contacted the State's Attorney Office and the clerk's office to obtain the necessary information to answer

the Complainant's initial questions and he wrote to the Complainant answering those questions.

This reviewing committee also considered the following:

In his answer to the complaint, the Respondent admitted that he placed the Complainant's requests on the "back burner" and ultimately overlooked the Complainant's requests. The Respondent apologized for responding in an untimely manner. The Respondent testified that he did not believe there was any urgency associated with the requests. The Respondent offered to take a CLE class on legal ethics during the winter. Respondent's counsel argued there was no prejudice to the Complainant, the Respondent's actions were not intentional or willful, and the Respondent had no prior disciplinary history. The Complainant argued that the Respondent was not untimely in responding to the requests, he ignored the requests. The Complainant testified that he had tried to obtain the information from other sources, but he was unsuccessful.

This reviewing committee concludes by clear and convincing evidence that the Respondent violated the Rules of Professional Conduct.

Rule 1.4(a) requires an attorney to keep a client reasonably informed and promptly comply with reasonable requests for information. In this case, the Respondent received a letter from the Complainant asking for information from his file. The Respondent failed to answer the letter. The Complainant wrote a second time to the Respondent who again failed to answer the letter. The Respondent did not answer the letter until after the Complainant filed a grievance against him. The Respondent admitted that he overlooked the Complainant's requests for information and failed to answer the letters in a timely fashion.

Since we conclude that the Respondent violated Rule 1.4(a) of the Rules of Professional Conduct, we order the Respondent to attend in-person a continuing legal education ("CLE") course in legal ethics. The CLE course is to consist of a minimum of three credit hours, and is to be taken, at the Respondent's own expense, within six months of the issuance of this decision. The Respondent is further ordered to provide the Statewide Grievance Committee with written confirmation of his compliance with this condition within thirty days of completion of the CLE course.

(D)
EMR

DECISION DATE: 2/15/08

Attorney Geoffrey Naab

Attorney Evelyn Gryk Frolich

Smith v. Wagoner,
No. 03-509 (Conn. Statewide Grievance Comm. Dec. 23, 2004)

jud.ct.gov

Clifford A. Smith v. Walter D. Wagoner, Jr.

STATEWIDE GRIEVANCE COMMITTEE

Clifford A. Smith, Complainant vs. Walter D. Wagoner, Jr., Respondent

Grievance Complaint #03-0509

DECISION

Pursuant to Practice Book §2-35, the undersigned, duly-appointed reviewing committee of the Statewide Grievance Committee, conducted a hearing at the Superior Court, 1061 Main Street, Bridgeport, Connecticut on November 3, 2004. The hearing addressed the record of the complaint filed on December 16, 2003, and the probable cause determination filed by the New Haven Judicial District Grievance Panel for the towns of Bethany, New Haven and Woodbridge on August 27, 2004, finding that there existed probable cause that the Respondent violated Rules 1.3 and 1.4 of the Rules of Professional Conduct.

Notice of the hearing was mailed to the Complainant and

to the Respondent on September 27, 2004. Both the Complainant and the Respondent appeared at the hearing and testified. Attorney Fred Dahlmeyer testified as a witness on the Complainant's behalf.

Reviewing committee member Attorney Rita A. Steinberger was not present for the November 3, 2004 hearing. Since both the Complainant and the Respondent waived Attorney Steinberger's participation, this decision was rendered by the undersigned.

This reviewing committee finds the following facts by clear and convincing evidence:

The Respondent was retained in 1999 by the Complainant regarding a bankruptcy matter. In August of 2000, the Complainant sold his house in Ansonia, Connecticut. At that time, there was a lien on the house from People's Bank. The Complainant's debt to People's Bank was discharged in the bankruptcy, but it was necessary to obtain documentation reflecting this fact for recording on the Ansonia property records. Beginning in 2000, the Complainant and his closing attorney, Fred Dahlmeyer, began to request such documentation from the Respondent. They made numerous requests to the Respondent, both orally and in writing, for the documentation. The

Respondent failed to respond to many of these inquiries. At one point, the Respondent requested, and received, additional funds to proceed with the matter. Despite that, the Respondent did not secure the documentation until April of 2004, and only after this grievance complaint was filed. At the hearing on this matter, the Respondent apologized for taking so long to obtain the requested documentation.

This reviewing committee concludes by clear and convincing evidence that the Respondent violated the Rules of Professional Conduct. The Respondent's failure to obtain the requested documentation and to adequately respond to numerous inquiries over a span of almost four years, constitute obvious failures to act with reasonable diligence and to adequately communicate, in violation of Rules 1.3 and 1.4(a), respectively, of the Rules of Professional Conduct. While this reviewing committee appreciates the Respondent's candor in acknowledging and apologizing for his misconduct, we find the Respondent's conduct in this matter to be inexcusable given the length of the delay and the failure to adequately respond. Accordingly, the Respondent is reprimanded for violating Rules 1.3 and 1.4(a) of the Rules of Professional Conduct.

DECISION:

12/23/04

Attorney Randy L. Cohen

Mr. William D. Murphy

Vasel v. Skelton,
No. 99-453 (Conn. Statewide Grievance Comm. 1999)

jud.ct.gov

Carmen Cecilia Vasel v. Robert G. Skelton

STATEWIDE GRIEVANCE COMMITTEE

Carmen Cecilia Vasel, Complainant vs. Robert G. Skelton, Respondent

Grievance Complaint #99-0453

DECISION

Pursuant to Practice Book §2-35, the undersigned, duly-appointed reviewing committee of the Statewide Grievance Committee, conducted a hearing at the Superior Court, 1 Court Street, Middletown, Connecticut on July 13, 2000. The hearing addressed the record of the complaint filed on November 19, 1999, and the probable cause determination filed by the New Haven Judicial District, Geographical Area 6 Grievance Panel on May 11, 2000, finding that there existed probable cause that the Respondent violated Rules 1.4 and 1.15(b) of the Rules of Professional Conduct.

Notice of the July 13, 2000 hearing was mailed to the

Complainant and to the Respondent on June 2, 2000. The Complainant and the Respondent appeared and testified before this reviewing committee. This reviewing committee also heard the testimony of Mr. David Cahill. The Complainant was represented by Attorney Kevin Morin. The Respondent was represented by Attorney Walter Sidor, Jr.

This reviewing committee finds the following facts by clear and convincing evidence:

The Complainant retained the Respondent in October of 1995 to bring a civil lawsuit. This first case ended in a nonsuit on November 20, 1996. The Complainant testified that she was never informed of this by the Respondent, but rather found out when she went to the court and looked at the file herself. The Respondent filed a second lawsuit, utilizing the accidental failure of suit statute. On April 28, 1997, this second case was nonsuited, and sanctions were entered against the Respondent. A motion to open the nonsuit was denied on August 11, 1997, and costs were assessed against the Complainant. Again, the Complainant testified that she was not told of this by the Respondent, but found out on her own. The Respondent also represented the Complainant in the defense of a foreclosure action. The Respondent never provided the Complainant with copies of any motions or other documents in this case, despite the

Complainant's request that he do so.

The Respondent testified that his attorney-client relationship with the Complainant arose when he was recommended to her by Attorney Ray LaFoll. The lawsuits arose out of a dispute with the Complainant's son regarding the family business. The Respondent represented the Complainant individually and as executrix for her late husband's estate. Attorney LaFoll is the lawyer for the estate of the Complainant's late husband. The Respondent communicated with Attorney LaFoll regularly.

Initially, the Respondent communicated with the Complainant, but in 1996 a problem arose regarding testimony by the Complainant at her deposition, which the Respondent regarded as raising issues of potential criminal misconduct by the Complainant. The nonsuit entered in the first plaintiff's case because the Respondent was unable to answer interrogatories honestly because he was afraid that the Complainant was lying to him. Thereafter, the Respondent had misgivings regarding direct communication with the Complainant due to his concerns.

With regard to providing copies of pleadings to the Complainant, the Respondent stated that he instructed his staff to do so, but does not know if they did. In May of 1999,

the Respondent was informed that the firm of Blume, Elbaum, Collins & Kelly would be taking over the file for the Complainant. The Respondent told them that they could look at the files, which were voluminous, at any time, but he would not turn them over until they filed an appearance in lieu of his. This was done on June 5, 2000, and the files were transferred on June 16, 2000. An accounting was requested from the Respondent, and one was ultimately provided reflecting legal fees higher than the amount charged the Complainant by the Respondent, who stopped billing the Complainant after the problem arose in 1996.

This committee concludes that there is clear and convincing evidence that the Respondent violated Rule 1.4(a) by failing to adequately communicate with the Complainant. The committee recognizes that sometimes a communication goes through referring counsel. However, in this situation, the Respondent failed to insure that documents were sent to the Complainant as per her requests, and the Respondent failed to adequately communicate essential information about the status of the cases to the Complainant, who was the Respondent's direct client. This is especially true once the problem arose with the Complainant's deposition testimony. If the Respondent then had misgivings about his continued representation of the Complainant, these misgivings should have been clearly communicated to the

Complainant. The committee does not find a violation of Rule 1.15(b), since an accounting of the fees actually charged was provided, and since the Respondent was acting appropriately in requesting that an appearance in lieu of his own be filed before turning over the Complainant's files. Accordingly, this committee concludes that the Respondent be reprimanded for violating Rule 1.4(a) of the Rules of Professional Conduct, and that he complete a Continuing Legal Education course in legal ethics within nine (9) months of this decision, and provide proof thereof to the statewide bar counsel's office.

Attorney Kerry A. Tarpey

Attorney Lorraine D. Eckert

Ms. Mary Ellen Smith

Gray v. Brown,
No. 97-41 (Conn. Statewide Grievance Comm. 1997)

jud.ct.gov

Dan Gray v. Ridgely W. Brown

STATEWIDE GRIEVANCE COMMITTEE

Dan Gray, Complainant vs. Ridgely W. Brown, Respondent

Grievance Complaint #97-0041

PROPOSED DECISION

Pursuant to Practice Book §2-35, the undersigned, duly-appointed reviewing committee of the Statewide Grievance Committee, conducted a hearing at the Superior Court, 235 Church Street, New Haven, Connecticut on December 3, 1997, February 4, 1998, and April 1, 1998. The hearing addressed the record of the complaint filed on July 14, 1997, and the probable cause determination filed by the Stamford/Norwalk Judicial District Grievance Panel on September 12, 1997, finding that there existed probable cause that the Respondent violated Rules 1.3, 1.4, 1.5, 1.15, 1.16, and 3.2 of the Rules of Professional Conduct.

Notice of the December 3, 1997 hearing was mailed to the Complainant and to the Respondent on October 30, 1997;

notice of the February 4, 1998 hearing was mailed on December 12, 1997; notice of the April 1, 1998 hearing was mailed on February 6, 1998. The Complainant and the Respondent each appeared and gave testimony. This reviewing committee also heard testimony from Ellen Gray. Exhibits were received into evidence.

This reviewing committee finds the following facts by clear and convincing evidence:

On or about June 16, 1995, the Complainant retained the Respondent and paid the Respondent an $800.00 retainer to investigate the possibility of bringing a civil action against a real estate broker in connection with the Complainant's purchase of a house. On or about August 2, 1995, the Complainant entered into an agreement with the Respondent whereby the Respondent would bring a class action lawsuit, based upon the real estate transaction giving rise to the cause of action against the Complainant's real estate broker. By way of a letter dated August 2, 1995, addressed by the Respondent to the Complainant, the terms of the retainer were set forth. The retainer called for, among other things, a flat fee of $15,000.00. In discussing with the Complainant the bringing of a class action lawsuit, the Respondent did not disclose to the Complainant that it is very unusual for one party to finance a lawsuit for an entire

class and that the class members rarely recover a significant amount.

After being retained to initiate the class action lawsuit, the Respondent drafted and filed a civil complaint with the Superior Court. Thereafter, little was done on the lawsuit. Depositions were noted by the Respondent for opposing parties but at the request of opposing counsel, the depositions were postponed and never went forward. The Complainant repeatedly made requests to the Respondent for information regarding the status of the lawsuit but received no replies from the Respondent. Finally, the Complainant chose to discontinue the services of the Respondent.

By way of a letter dated March 22, 1997, the Complainant informed the Respondent that he wished to discontinue the lawsuit, that he wanted an itemized invoice for the Respondent's services to date, and that he wanted a refund of his $15,000.00 fee less any expenses that had been incurred by the Respondent. The Complainant requested a reply from the Respondent within thirty days. When no response was forthcoming, the Complainant again wrote to the Respondent on May 2, 1997, reiterating the requests made in his March 22, 1997 letter.

In April, 1997, the Respondent received a dormancy

calendar from the Superior Court, notifying him that the Complainant's lawsuit was subject to dismissal for dormancy. By way of a letter dated May 2, 1997 addressed to the Complainant, the Respondent informed the Complainant that the $15,000.00 fee that had been paid by the Complainant had been agreed to as a minimum fee. He also stated, among other things, that he was in the process of changing his computer system and that an itemized billing was not presently available but would be provided in the future. The Respondent made no mention in his May 2, 1997 letter about the dormancy dismissal possibility. There followed a further exchange of letters between the Complainant and the Respondent in which no mention was made of the potential dormancy dismissal. On June 20, 1997, the Complainant's civil action was dismissed for dormancy by the Superior Court. By way of a letter dated July 21, 1997, the Respondent informed the Complainant for the first time that he had carried out the Complainant's wishes in not doing anything further with his lawsuit and, as a result, it was dismissed for dormancy. Thereafter, the Respondent refused to provide the Complainant with his file unless the Complainant paid for the cost of photocopying it.

This reviewing committee also considered the following:

The Respondent testified that he sent the Complainant

notice of the possibility of a dormancy dismissal of his lawsuit but did not have a copy of such notice in his file. The Respondent testified that he discussed the Complainant's case with a Nancy Suttonberg, a possible expert witness for the Complainant. The Respondent had no notes of any discussions with Suttonberg nor any bill for any services that she provided. The Respondent testified that he may have sent the Complainant copies of some of the pleadings in the lawsuit, but that he could not recall whether he did so and had no record of having done so.

It is the opinion of this reviewing committee that there exists clear and convincing evidence that the Respondent violated Rules 1.4, 1.5, and 1.16 of the Rules of Professional Conduct. In violation of Rule 1.4, it is our conclusion that the Respondent failed to adequately discuss with the Complainant the ramifications of bringing a class action lawsuit, including the fact that members of the class rarely recover a significant amount and that it was very unusual for one party to finance such an action. In further violation of Rule 1.4, the Respondent did not inform the Complainant of the possibility of a dormancy dismissal until after the dormancy judgment entered. In violation of Rule 1.5, in addition to the unreasonableness of the Complainant funding an entire class action lawsuit, the Respondent did very little work on the Complainant's case after receiving his

$15,000.00 fee, and not nearly enough to justify such a fee. In violation of Rule 1.16 of the Rules of Professional Conduct, the Respondent refused to provide the Complainant with a copy of his file unless the Complainant paid for the copying costs, in spite of there being no provision in their retainer agreement for the Complainant being responsible for the copying costs of his own file. Having allowed the Complainant's case to be dismissed for dormancy, the Respondent's refusal to provide the Complainant with a copy of his file jeopardized the Complainant's ability to protect his interests. It is the recommendation of this reviewing committee that the Respondent be reprimanded by the Statewide Grievance Committee, ordered to return to the Complainant his file, and ordered to submit to fee arbitration for a determination of a reasonable fee for the work the Respondent did for the Complainant.

Attorney Margaret P. Mason

Attorney Lewis A. Hurwitz

Mr. Marcus R. McCraven

McCartney-Jahaf v. Chmielecki,
No. 97-751 (Conn. Statewide Grievance Comm. 1997)

jud.ct.gov

Lori McCartney-Jahaf v. Maureen Anne Chmielecki

STATEWIDE GRIEVANCE COMMITTEE

Lori McCartney-Jahaf, Complainant vs. Maureen Anne Chmielecki, Respondent

Grievance Complaint #97-0751

DECISION

Pursuant to Practice Book '2-35, the undersigned, duly-appointed reviewing committee of the Statewide Grievance Committee, conducted a hearing at the Superior Court, 1 Court Street, Middletown, Connecticut on November 12, 1998. The hearing addressed the record of the complaint filed on March 17, 1998, and the probable cause determination filed by the Hartford-New Britain Judicial District, Geographical Areas 13 and 14 Grievance Panel on June 11, 1998, finding that there existed probable cause that the Respondent violated Rules 1.3 and 1.4 of the Rules of Professional Conduct.

Notice of the hearing was mailed to the Complainant and to

the Respondent on September 23, 1998. The Complainant and the Respondent appeared and testified before this reviewing committee.

This reviewing committee finds the following facts by clear and convincing evidence:

In or around April of 1996, the Complainant retained the Respondent to represent her in connection with a dissolution of marriage proceeding. After a delay occasioned by several unsuccessful attempts at reconciliation, the Complainant advised the Respondent in or around September of 1996 of her decision to proceed with the divorce. The Respondent drafted a complaint, which was apparently served in November or December of 1996.

In or around May of 1997, the Complainant began to experience difficulty in obtaining information from the Respondent concerning the status of her divorce. Numerous telephone messages were not returned. On occasion, the Complainant would call and would receive a message indicating that the Respondent's telephone answering machine was full, preventing the Complainant from leaving a message. The Respondent failed to contact the Complainant in response to any of the telephone messages left between May of 1997 and January of 1998, when the

Complainant sent the Respondent a letter terminating her services.

On or about January 20, 1998, the Complainant sent a letter to the Respondent by facsimile transmission requesting an itemization of expenses charged against her retainer fee. The letter also informed the Respondent that the Complainant was terminating her services, and requested a copy of her file. The Respondent failed to answer the Complainant's letter.

This reviewing committee also considered the following:

The Respondent testified that she was unaware of any unreturned telephone messages. The Respondent also testified that she was unaware of the January 20, 1998 letter until the instant complaint was filed.

This reviewing committee finds, by clear and convincing evidence, that the Respondent violated Rules 1.3 and 1.4 of the Rules of Professional Conduct in connection with the Complainant's divorce matter. We find that the Respondent failed to exercise reasonable diligence in providing the Complainant with information concerning her divorce matter, and therefore violated Rule 1.3 of the Rules of Professional Conduct. The Respondent also failed to keep

the Complainant reasonably informed about the status of her matter, and failed to promptly comply with her reasonable requests for information about her divorce, including information concerning her retainer, in violation of Rule 1.4 of the Rules of Professional Conduct. We do not find credible the Respondent's claims that she was unaware of the numerous attempts by the Complainant to contact her by telephone, or that she did not receive the Complainant's January 20, 1998 correspondence. For all of the foregoing reasons, we hereby reprimand the Respondent.

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Attorney Thomas Cloutier

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Attorney Kerry A. Tarpey

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Mr. Terrence K. Nichols

Alexander v. Ayars,
No. 97-956 (Conn. Statewide Grievance Comm. 1997)

jud.ct.gov

Matthew Alexander v. Patricia A. Ayars

STATEWIDE GRIEVANCE COMMITTEE

Matthew Alexander, Complainant vs. Patricia A. Ayars, Respondent

Grievance Complaint #97-0956

DECISION

Pursuant to Practice Book §2-35, the undersigned, duly-appointed reviewing committee of the Statewide Grievance Committee, conducted a hearing at the Superior Court, 1 Court Street, Middletown, Connecticut on November 12, 1998. The hearing addressed the record of the complaint filed on June 1, 1998, and the probable cause determination filed by the Hartford-New Britain Judicial District, Geographical Areas 12, 15, 16 and 17 Grievance Panel on August 20, 1998, finding that there existed probable cause that the Respondent violated Rules 1.4 and 1.16 of the Rules of Professional Conduct.

Notice of the hearing was mailed to the Complainant and to

the Respondent on September 23, 1998. The Complainant appeared and testified before this reviewing committee. The Respondent did not appear.

This reviewing committee finds the following facts by clear and convincing evidence:

The Complainant is employed as a managing agent for White and Katzman, a property management company employed by the Ivybrook Village Condominium Association. In 1997, Ivybrook Village Condominium Association referred several condominium charge foreclosure matters to the Respondent. The Complainant made requests on behalf of Ivybrook Village Condominium Association for updates on the progress of the foreclosure matters in letters dated January 7, 1998 and March 4, 1998. On March 31, 1998, the Complainant advised the Respondent that the Ivybrook Village Condominium Association desired a return of its files, as they were dissatisfied with the Respondent's services. The Respondent failed to return subsequent telephone calls from the Complainant concerning a return of the files. While the Respondent claimed in her answer to the complaint that she intended to retain the files until her fees were paid in full, it appears that the Respondent never advised the Complainant or the Association of her position concerning the files prior

to the filing of the instant complaint.

This reviewing committee finds by clear and convincing evidence that the Respondent has violated Rule 1.4 of the Rules of Professional Conduct. The Respondent failed to keep her client reasonably informed about the status of its matters by failing to respond in an adequate manner to her client's requests for its files made through their agent. The Respondent failed to advise her client or her client's agent that it was her intention to keep the files to protect her fee. If it was the Respondent's position that she was entitled to claim a lien on her client's files to protect her fee, she was required to promptly notify the client or its agent of her position to allow them to take necessary steps to protect their interests. Her failure to do so until after this grievance was filed violated Rule 1.4 of the Rules of Professional Conduct. We do not find a violation of Rule 1.16. However, because we find a violation of Rule 1.4, the Respondent is hereby reprimanded.

_____

Attorney Kerry A. Tarpey

_____

Attorney Thomas Cloutier

_____

Mr. Terence K. Nichols

Pickerstein v. Kuranko,
No. 96-401 (Conn. Statewide Grievance Comm. 1996)

jud.ct.gov

Harold J. Pickerstein v. Lawrence Kuranko

STATEWIDE GRIEVANCE COMMITTEE

Harold J. Pickerstein, Complainant vs. Lawrence Kuranko, Respondent

Grievance Complaint #96-0401

PROPOSED DECISION

Pursuant to Practice Book §27J, the undersigned, duly-appointed reviewing committee of the Statewide Grievance Committee, conducted hearings at the Superior Court, 1061 Main Street, Bridgeport, Connecticut on June 11, 1997 and October 8, 1997. The hearings addressed the record of the complaint filed on November 4, 1996, and the probable cause determination filed by the Stamford-Norwalk Judicial District Grievance Panel on February 7, 1997, finding that there existed probable cause that the Respondent violated Rules 1.3, 1.4 and 8.4 of the Rules of Professional Conduct.

Notice of the hearing on June 11, 1997 was mailed to the

Complainant and to the Respondent on April 28, 1997. Notice of the hearing on October 8, 1997 was mailed to the Complainant and to the Respondent on July 23, 1997. The Complainant appeared on both dates and was heard by this reviewing committee. The Respondent also appeared on both dates, represented by Attorney Roger J. Frechette, but refused to testify at the October 8, 1997 hearing. Exhibits were received into evidence.

This reviewing committee finds the following facts by clear and convincing evidence:

In his complaint, the Complainant alleged that he represents Sherry Lupinacci, a former client of the Respondent. The Complainant alleged that Ms. Lupinacci retained the Respondent's legal services regarding a claim against Prudential Securities. The Complainant further alleged that the Respondent advised Ms. Lupinacci that her claim had been resolved in her favor pursuant to an arbitration award. The Complainant further alleged that the Respondent provided Ms. Lupinacci with a copy of the purported arbitration award. The Complainant further alleged that it appeared that the award was never actually entered and that the copy of the purported award may have been a forgery. The Complainant further alleged that on numerous occasions since 1994, Ms. Lupinacci attempted to

communicate with the Respondent regarding her matter but the Respondent failed to respond. The Complainant further alleged that Ms. Lupinacci's requests that the Respondent provide her with her file have also gone unheeded. The Respondent did not answer this complaint.

At the hearings on June 11, 1997 and October 8, 1997, the Respondent's counsel represented that his client is ready to be presented to the Superior Court for whatever discipline the court may deem appropriate. At the October 8, 1997 hearing before this reviewing committee, the Respondent refused to be sworn or testify despite this reviewing committee's informing the Respondent of our intent to pose questions of the Respondent. However, the Respondent did not exercise his fifth amendment privilege. During a brief recess requested by Respondent's counsel on October 8, 1997, the Respondent left the hearing room and did not return.

The Complainant testified in accordance with the allegations of his complaint. The Complainant further testified at the hearing on October 8, 1997 that the Respondent has made restitution to Ms. Lupinacci. The Complainant testified that two days after the initial hearing in this grievance complaint, the Respondent made his first restitution installment to Ms. Lupinacci on June 13, 1997. The

Complainant testified that the Respondent made final restitution by check on September 29, 1997. The Complainant testified that restitution made by the Respondent was in the amount of $62,000.00. The Complainant testified that the settlement agreement was reached on June 11, 1997 prior to the first hearing in this grievance complaint.

In light of the Respondent's failure to rebut the Complainant's allegations, the Complainant's testimony, and the record before us, the Complainant's allegations are found by clear and convincing evidence to be fact. Accordingly, this reviewing committee concludes by clear and convincing evidence that the Respondent violated Rules 1.3, 1.4 and 8.4 of the Rules of Professional Conduct. The Respondent's failure to pursue Ms. Lupinacci's claim against Prudential Securities with reasonable diligence and promptness constituted a violation of Rule 1.3 of the Rules of Professional Conduct. The Respondent's failure to keep Ms. Lupinacci reasonably informed about the status of her claim against Prudential Securities and to promptly comply with her reasonable requests for information constituted a violation of Rule 1.4(a) of the Rules of Professional Conduct. The Respondent's failure to explain the matter to the extent reasonably necessary to permit Ms. Lupinacci to make informed decisions regarding the representation constituted

a violation of Rule 1.4(b) of the Rules of Professional Conduct. The Respondent's misrepresentation to Ms. Lupinacci that an arbitration award had been entered in her favor when it had not, and his provision to her of a document purporting to be an arbitration award in her favor when the Respondent knew that no such document existed, constituted conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) of the Rules of Professional Conduct.

This reviewing committee further finds by clear and convincing evidence that the Respondent's knowing failure to respond to a lawful demand for information from this reviewing committee at the October 8, 1997 hearing before this reviewing committee, including the Respondent's departure from the hearing, after being informed by this reviewing committee that we had questions to pose to the Respondent and his refusal to be sworn, constituted a violation of Rule 8.1(b) of the Rules of Professional Conduct. Accordingly, this reviewing committee recommends that the Statewide Grievance Committee present the Respondent to the Superior Court for whatever discipline the court may deem appropriate.

Attorney David A. Curry

Mr. Thomas J. McKiernan

Voigt v. Mancini,
No. 95-0194 (Conn. Statewide Grievance Comm. 1995)

STATEWIDE GRIEVANCE COMMITTEE

Anna Voigt, Complainant vs. Philip R. Mancini, III, Respondent

Grievance Complaint #95-0194

PROPOSED DECISION

Pursuant to Practice Book '27J, the undersigned, duly- appointed reviewing committee of the Statewide Grievance Committee, conducted hearings at the Superior Court, 1061 Main Street, Bridgeport, Connecticut, on March 13, 1996, and on June 12, 1996. The hearings addressed the record of the complaint filed on September 5, 1995, and the probable cause determination filed by the New Haven Judicial District, Geographical Area 6 Grievance Panel on December 4, 1995, finding that the Respondent had violated Rules 1.1, 1.3, and 1.4 of the Rules of Professional Conduct by failing to return the Complainant's files to her. The hearings also addressed an additional finding of probable cause rendered by this reviewing committee on May 9, 1996, that the Respondent violated Rules 1.3 and 1.4 of the Rules of Professional Conduct in his handling of a personal injury matter involving the Complainant's mother.

Notice of the March 13, 1996 hearing was mailed to the Complainant and to the Respondent on February 14, 1996. Notice of the June 12, 1996 hearing was mailed to the Complainant and Respondent on April 29, 1996. The Complainant appeared and testified at both hearings. The Respondent only appeared at the March 13, 1996 hearing. An exhibit was admitted into evidence.

This reviewing committee finds the following facts by clear and convincing evidence:

The Respondent represented the Complainant in a number of matters, including a dispute with a contractor, and a probate matter regarding a conservatorship established for the Complainant's mother. The Respondent also represented the Complainant's mother in a personal injury action entitled Rist v. Franklin Financial Corporation, et al, bearing docket number CV-90-0295404 in the

Superior Court for the Judicial District of New Haven. A motion was filed in said action substituting the Complainant as plaintiff in her capacity as conservator for her mother. The Complainant testified that she was advised by the Respondent that she had been appointed as conservator for her mother.

In July or August of 1995, the Complainant requested that the Respondent forward to her the various files he had been handling for her. The files in question were not returned to the Complainant until the hearing held before this reviewing committee on March 13, 1996. We do not find credible the Respondent's claims of prior attempts to provide the Complainant with her files, in light of his failure to provide any documentation regarding the same.

The personal injury matter involving the Complainant's mother was dismissed by the court. The Respondent failed to apprise the Complainant of the fact that the suit had been dismissed. The Respondent failed to keep the Complainant or her mother reasonably informed about the status of the personal injury matter.

This reviewing committee finds by clear and convincing evidence that the Respondent violated Rules 1.3 and 1.4 of the Rules of Professional Conduct. The Respondent failed to exercise reasonable diligence in returning the Complainant's files to her. The personal injury matter involving the Complainant's mother was dismissed, and the Respondent failed to inform the Complainant or her mother. The Respondent failed to keep the Complainant or her mother adequately informed about the status of the matter. Accordingly, it is the recommendation of this reviewing committee that the Statewide Grievance Committee should reprimand the Respondent.

Attorney Lewis A. Hurwitz

Attorney Alfred R. Belinkie

Mr. Neal Jewell

Rogalsky v. Farrell,
No. 96-129 (Conn. Statewide Grievance Comm. 1996)

jud.ct.gov

Sandra S. Rogalsky v. James J. Farrell

STATEWIDE GRIEVANCE COMMITTEE

Sandra S. Rogalsky, Complainant vs. James J. Farrell, Respondent

Grievance Complaint #96-0129

PROPOSED DECISION

Pursuant to Practice Book '27J, the undersigned, duly-appointed reviewing committee of the Statewide Grievance Committee, conducted a hearing at the Superior Court, 235 Church Street, New Haven, Connecticut on February 5, 1997. The hearing addressed the record of the complaint filed on August 7, 1996, and the determination filed by the Stamford-Norwalk Judicial District Grievance Panel on October 7, 1996, finding probable cause that the Respondent violated Rules 1.3, 1.4 and 1.5 of the Rules of Professional Conduct.

Notice of the hearing was mailed to the Complainant and to the Respondent on January 2, 1997. The Complainant

appeared and testified before this reviewing committee. The Respondent also appeared and testified.

This reviewing committee finds the following by clear and convincing evidence:

The Respondent represented the Complainant in a personal injury matter. The Respondent filed suit on the Complainant's behalf sometime around December of 1992 or January of 1993. In July of 1993, a judgement of non-suit was entered against the Complainant for failure to comply with discovery requests. The Respondent did not advise the Complainant that the case was dismissed. The Respondent filed a motion to open the judgment of dismissal within four months of the order of non-suit. The Respondent was under the impression that the motion was acted on favorably by the court, as he had appeared at the short calendar on which the motion to open the judgment was scheduled, and was told by the court that the motion would be granted. However, the court file contains no record that the motion was in fact granted by the court. The Respondent has attempted to rectify the situation with the court, but failed to make his client aware of his efforts in this regard. The Complainant had attempted to obtain her file from the Respondent, but as of the date of the hearing in this matter, the Respondent had not provided the Complainant with her

file.

This reviewing committee also considered the following evidence:

The Respondent admitted that his communication with the Complainant was not exemplary. The Respondent stated that certain medical problems he experienced during the period of time he was handling the Complainant's matter exacerbated the situation.

This reviewing committee finds clear and convincing evidence in the record of this complaint that the Respondent failed to adequately communicate with his client, in violation of Rule 1.4 of the Rules of Professional Conduct. The Respondent also failed to act with reasonable diligence and promptness in returning the Complainant's file, in spite of her requests, in violation of Rule 1.3 of the Rules of Professional Conduct. The Respondent's failure to adequately communicate with his client also represented a lack of diligence on his part, in violation of Rule 1.3. We do not find that the Respondent violated Rule 1.5 of the Rules of Professional Conduct. However, insofar as we find by clear and convincing evidence that the Respondent has violated Rules 1.3 and 1.4 of the Rules of Professional Conduct, we recommend that the Statewide Grievance

Committee reprimand the Respondent. We also recommend that pursuant to its authority under Section 27M.1(a) of the Connecticut Rules of Court, the Statewide Grievance Committee order the Respondent to return the Complainant's file to her within one month of the adoption of this proposed decision, provided that it is so adopted. We also recommend, pursuant to '27M.1(a), that the Statewide Grievance Committee order the Respondent to attend a continuing legal education course in law office management within six months of the adoption of this proposed decision, provided it is so adopted.

Attorney Margaret P. Mason

Attorney Thomas Cloutier

Mr. Marcus R. McCraven