

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.

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Attorney Geoffrey Naab

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Attorney Tracie Molinaro