

STATE OF CONNECTICUT



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STATEWIDE GRIEVANCE COMMITTEE

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Second Floor - Suite Two
287 Main Street, East Hartford, Connecticut 06118-1885

10/30/2015

OFFICE OF CHIEF DISCIPLINARY C
100 WASHINGTON STREET
HARTFORD CT 06106

JOSEPHINE SMALLS MILLER
152 DEER HILL AVENUE
SUITE 302
DANBURY CT 06810

RE: GRIEVANCE COMPLAINT #14-0803
DANBURY JD GRIEVANCE PANEL vs. MILLER

Dear Respondent and Disciplinary Counsel:

Enclosed herewith is the decision of the reviewing committee of the Statewide Grievance Committee concerning the above referenced matter. In accordance with the Practice Book Sections 2-35, 2-36 and 2-38(a), the Respondent may, within thirty (30) days of the date of this notice, submit to the Statewide Grievance Committee a request for review of the decision.

A request for review must be sent to the Statewide Grievance Committee at the address listed above.

Sincerely,


Michael P. Bowler 

Encl.

cc: Attorney Eugene J. Riccio
DANBURY JD GRIEVANCE PANEL

NOTICE REGARDING DECISION
SANCTIONS OR CONDITIONS

GRIEVANCE COMPLAINT # 14-0603

THE ATTACHED DECISION IS PRESENTLY STAYED IN ACCORDANCE WITH PRACTICE BOOK §§2-35 AND 2-38.

SECTION 2-35 STATES, IN PART, AS FOLLOWS:

(e) ... Enforcement of the final decision ... shall be stayed for thirty days from the date of the issuance to the parties of the final decision. In the event the respondent timely submits to the Statewide Grievance Committee a request for review of the final decision of the reviewing committee, such stay shall remain in full force and effect pursuant to Section 2-38(b).

SECTION 2-38 STATES, IN PART, AS FOLLOWS:

(b) ... Enforcement of a decision by a reviewing committee imposing sanctions or conditions against the respondent ... shall be stayed for thirty days from the issuance to the parties of the final decision of the reviewing committee pursuant to Section 2-35(g). If within that period the respondent files with the Statewide Grievance Committee a request for review of the reviewing committee's decision, the stay shall remain in effect for thirty days from the issuance by the Statewide Grievance Committee of its final decision pursuant to Section 2-36. If the respondent timely commences an appeal [of the sanctions or conditions to the Superior Court] pursuant to subsection (a) of this section, such stay shall remain in full force and effect until the conclusion of all proceedings, including all appeals, relating to the decision imposing sanctions or conditions against the respondent. If at the conclusion of all proceedings, the decision imposing sanctions or conditions against the respondent is rescinded, the complaint shall be deemed dismissed as of the date of the decision imposing sanctions or conditions against the respondent.

DECISION DATE: 10-30-15

STATEWIDE GRIEVANCE COMMITTEE

Danbury Judicial District Grievance
Complainant

:

vs.

:

Grievance Complaint #14-0803

Josephine Smalls Miller
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 1, 2015. The hearing addressed the record of the complaint filed on October 27, 2014, and the probable cause determination filed by the Stamford Norwalk Judicial District Grievance Panel on May 11, 2015, finding that there existed probable cause that the Respondent violated Rules 3.3(a)(1), and 8.4(3) and (4) of the Rules of Professional Conduct. The hearing also addressed the additional allegations of misconduct filed by Disciplinary Counsel on July 6, 2015, finding that the Respondent violated Rules 3.1, 3.3(a)(1) and 8.4(3) of the Rules of Professional Conduct.

Notice of the hearing was mailed to the Complainant, to the Respondent and to the Office of the Chief Disciplinary Counsel on August 5, 2015. Pursuant to Practice Book §2-35(d), Assistant Disciplinary Counsel Karyl Carrasquilla pursued the matter before this reviewing committee. The Respondent appeared at the hearing and testified. Two exhibits were admitted into evidence.

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

In July of 2012, the Respondent filed a pro-se lawsuit against the Bridgeport Board of Education and Bridgeport City Attorney Mark Anastasi (hereinafter, "Defendants") in the Danbury Superior Court. In the civil complaint dated July 20, 2012, the Respondent alleged that she was an African-American female who has been a licensed attorney for 32 years. The Respondent alleged that the Defendants "failed and refused" to pay her for "valuable legal services performed." The Respondent further alleged that the "Defendants have paid Caucasian attorneys for the legal services performed by them, unlike its refusal to pay for such services performed" by the Respondent. The Respondent alleged that the Defendants discriminated against her based on her race.

The Defendants removed the case to Federal Court and filed a motion to dismiss. Judge Vanessa L. Bryant granted the Defendants' motion to dismiss as the Respondent had not "pled facts sufficient to allege that her race was the reason motivating Defendants' conduct." Judge Bryant granted the Respondent leave to file an amended complaint. The Respondent filed an amended complaint dated January 3, 2014 in the United States District Court. Josephine Miller

v. Bridgeport Board of Education, et al (3:12CV-01287). The Respondent's amended complaint included the addition of the following three new paragraphs:

44. Defendant Board of Education and Anastasi maintained a policy, practice, and custom of engaging only non-African-American attorneys and law firms to perform legal services.

45. Defendants have no African-American attorneys who perform legal services for it pursuant to Conn. Gen. Stat. §7-101a.

46. Records of Defendant Board of Education show no African-American attorneys who perform legal services for it pursuant to Conn. Gen. Stat. §7-101a.

On March 19, 2014, Judge Bryant denied a motion to dismiss the amended complaint filed by the Defendants. Pursuant to the "safe harbor" provision of F.R.C.P. 11(c)(2), Defendants' counsel sent a letter to the Respondent, providing the Respondent the opportunity to withdraw or correct the above referenced paragraphs of her amended complaint. In response to the "safe harbor" letter the Respondent replied, "I do not intend to withdraw any pleading. Your attempt to engage in the characteristic economic terrorism is to no avail." The Respondent did not withdraw or amend the allegations.

A motion for sanctions pursuant to F.R.C.P. 11 was filed by the Defendants. The Rule 11 motion included affidavits from two attorneys, Eroll Skyers and Michel Bayonne. Attorney Skyers attested that he is an African-American attorney employed as an Assistant City Attorney with the Office of the City Attorney for the City of Bridgeport and has known the Respondent professionally for more than 10 years. Attorney Skyers further attested that he has been counsel of record in nine legal matters representing the Bridgeport Board of Education and/or its employees. Attorney Skyers further attested that in one of the matters where he represented the defendants, Bridgeport Board of Education, et al, the Respondent was counsel for the plaintiff. Attorney Skyers attested that he met the Respondent in person many times during the course of his representation of the defendants, which included a trial in October of 2013, involving jury selection lasting approximately three days and the presentation of evidence for approximately two days. Attorney Bayonne attested that he is an African-American attorney and a Director with a law firm. Attorney Bayonne attested that he has served as counsel of record in twenty two legal matters representing the Bridgeport Board of Education and/or its employees. Attorney Bayonne further attested that his firm represented the Bridgeport Board of Education and he has served as counsel of record for the defendants representing the Bridgeport Board of Education and/or its employees in six matters in which the Respondent was counsel for the plaintiffs. Attorney Bayonne attested that in another case where his firm was retained as counsel of record, he represented the defendants Bridgeport Board of Education et al and the Respondent was counsel for the plaintiff. The matter involved a 20 day trial, including jury selection lasting approximately 5 days and the presentation of evidence for approximately 15 days. Attorney

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Bayonne attested that the jury returned a verdict on November 8, 2012.

In a July 30, 2014 Ruling on Motion for Sanctions, Judge Jeffrey A. Meyer found that the Respondent knowingly made false statements of fact with regard to paragraphs 44 and 45 of the amended complaint. Judge Meyer further found that "no objectively reasonable attorney would have made the allegations that she did in" paragraphs 44 and 45 of the amended complaint. Judge Meyer granted the Defendants' motion for sanctions and ordered that: the Respondent's case be dismissed with prejudice; the Respondent pay a penalty of \$1500; and a copy of his ruling forwarded to the Statewide Bar Counsel.

This reviewing committee also considered the following:

The Respondent testified that it is her position that Attorney Skyers is employed by the City of Bridgeport and therefore is not engaged to perform legal services for them. The Respondent further testified that it was her understanding that Attorney Bayonne was not engaged to perform legal services for the City of Bridgeport, but rather it was his firm that was engaged to do the work. The Disciplinary Counsel contended that Judge Meyer's decision is res judicata in this matter.

This reviewing committee finds the following violations of the Rules of Professional Conduct by clear and convincing evidence:

This reviewing committee concludes by clear and convincing evidence that the Respondent engaged in unethical conduct in violation of the Rules of Professional Conduct, in connection with her amended complaint filed in federal litigation against the Bridgeport Board of Education, et al. The Respondent knowingly and falsely alleged in paragraphs 44 and 45 of her amended complaint that the Defendants do not retain African-American attorneys to perform legal services, in violation of Rule 8.4(3) of the Rules of Professional Conduct. The Respondent's extensive participation in litigation with Attorneys Skyers and Bayonne demonstrates that she knew the statements to be untrue when she filed the amended complaint. The Respondent knowingly made a false statement of fact to the tribunal as stated above and failed to correct the false statement when given the opportunity to do so, in violation of Rule 3.3(a)(1) of the Rules of Professional Conduct. The Respondent referenced "economic terrorism" in response to the "safe harbor" letter, instead of withdrawing or amending the allegations in the amended complaint. The Respondent's conduct further constitutes conduct prejudicial to the administration of justice in violation of Rule 8.4(4) of the Rules of Professional Conduct.

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This reviewing committee concludes that the record lacks clear and convincing evidence to substantiate a finding of unethical conduct by the Respondent with regard to the additional allegations of misconduct filed by Disciplinary Counsel on July 6, 2015.

This reviewing committee concludes that the Respondent's violation of Rules 3.3(a)(1) and 8.4(3) and (4) of the Rules of Professional Conduct warrants a reprimand. Accordingly, we reprimand the Respondent.

DECISION DATE: 10/30/15

(4)
(DFR)

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Attorney Thomas Sansone

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Attorney Christopher T. Goulden

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Ms. Joan Gill

Ms. Joan Gill