



**STATEWIDE GRIEVANCE COMMITTEE**

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

JOHN A BERMAN  
JUDGE - PROBATE COURT  
50 SOUTH MAIN STREET  
WEST HARTFORD CT 06107

02/22/2002

RE: GRIEVANCE COMPLAINT #00-0310  
BERMAN vs. NOTOPOULOS

Dear Complainant:

Enclosed herewith is the decision of the reviewing committee of the Statewide Grievance Committee concerning your complaint.

Sincerely,

Daniel B. Horwitch

Encl.  
cc: Attorney Atherton B. Ryan

STATEWIDE GRIEVANCE COMMITTEE

John A. Berman  
Complainant

:

vs.

:

Grievance Complaint #00-0310

Joseph J. Notopoulos  
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 April 3, 2001. The hearing addressed the record of the complaint filed on October 13, 2000, and the probable cause determination filed by the New Britain/Hartford Judicial District, Geographical Areas 12 & 16 Grievance Panel on December 4, 2000, finding that there existed probable cause that the Respondent violated Rules 3.5, 8.2 and 8.4 of the Rules of Professional Conduct.

Notice of the hearing was mailed to the Complainant and to the Respondent on February 9, 2001. The Complainant did not appear, having stated in a letter dated February 15, 2001 that he was relying on the evidence in the record. The Respondent appeared and testified. Exhibits were admitted into evidence. In addition to pre-hearing factual submissions by both parties, the Respondent submitted a brief received by the Statewide Grievance Committee on March 22, 2001.

This reviewing committee makes the following findings by clear and convincing evidence:

The Complainant is a Judge of the Probate Court for the District of West Hartford. The Respondent became involved with the West Hartford Probate Court in his role as a conservator and co-executor on behalf of his mother. On September 8, 2000, the Respondent sent a letter to Renee Bradley, an assistant of the Complainant at the West Hartford Probate Court, which was also copied to the Respondent's brother and to Dr. Julian Parsons, a local physician. The Complainant filed this grievance on the basis that he found the September 8, 2000 letter to be abusive and insulting, in that it made several slurs against the Complainant's character and against the West Hartford Probate Court in general. The September 8, 2000 letter is excerpted at length as follows:

However, these obligations in no way run to the personal whims and fancies of an elected town politician, in a lame duck term he cannot even complete, who has clearly prostituted the integrity of his office and is presently running it as a financial spoils system for the cronies he calls his "professional conservators" in brazen violation of Section B of Canon 2 of the Code of Probate Judicial Conduct.

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Having come face-to-face during conservator proceedings with the rampant financial conflicts of interest that presently afflict the West Hartford Probate Court, .... [T]he assets of this estate have long ago been placed far beyond the venal and avaricious reach of the House of Berman-Levine, ....

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It is hardly surprising that Mr. Berman is now some 5½ months derelict in his obligation to execute Form PC-263 and close out this estate given the litany of abuses of his office that this family has been compelled to abide.

Representative but hardly all-inclusive of these abuses is his reprehensible extortion from the undersigned, without legal authority, of money for his crony Mrs. Levine on January 25, 1999; resorting to threats to impose upon the undersigned a substantial conservator's cash bond or to dispatch a psychiatrist to our residence to examine my mother and bill the estate, giving no consideration to Medicare fraud since that entity would ultimately absorb the bill; his reckless and irresponsible interference with and impairment of the physician-patient relationship through this endorsement of Mrs. Levine's sleazy, financially motivated and medically discredited attacks on my late mother's and my physician who is held in high esteem by his professional peers in the local medical community; his arrogant and contemptuous issuance of a decree in February 1999, which had to be amended at legal expense to this family, granting Mr. Fuller carte blanche authority to terminate my mother's life; and his placement of the financial greed of his cronies above my mother's best interest and welfare with utter contempt for applicable requirements of the Connecticut General Statutes to act in her best interest.

In this regard, most telling was his opportunistic, cynical and readily transparent exploitation of my late mother, in end of life circumstances with rapidly escalating medical expenses, to fund a private Marshall Plan for the

support, care and feeding of his crony Denny Fuller, court appointed dependent who conferred her with no benefit whatever and contributed absolutely nothing to her medical care but nonetheless managed to line his pockets with more than \$3600 of her funds in less than 4 months.

Because Mr. Berman has become not merely an embarrassment to this community but a demonstrated financial predator of its incapacitated and often dying elderly whose interests he is charged with the protection, in my capacity of a registered West Hartford elector, I am herewith demanding that he submit his resignation immediately rather than wait until compelled to do so next year by his advanced age that has seemingly impaired his ability to conduct his office with the integrity and competence that this community, including its physicians, may rightfully expect and demand.

In his November 8, 2000 answer to the grievance complaint, which was also referenced by the grievance panel in its probable cause finding, the Respondent first disputed what he believed to be a willful misrepresentation by the Complainant, regarding whether the Respondent had been engaged in the practice of law before the probate court. The Respondent vehemently denied that such was the case, and then went on to supplement the allegations of the September 8, 2000 letter, including stating the following:

Not content merely with the abuses of his own elected town office referenced in my letter of September 8, 2000, Mr. Berman now seeks to subvert and pervert the grievance committee's official function to enforce and ensure standards of competence and integrity in the practice of law to his nefarious personal purpose of suppressing constitutionally protected community speech having no relationship whatsoever to the practice of law or the delivery of legal services.

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Because such matters are issues of vital public impact and concern to my community, I shall continue to be a relentless and vocal community advocate for the extrication of its probate court from the pocketbooks and wallets of Mr. Berman's cronies and its consequential return to the West Hartford community to which it rightfully belongs. In so doing, I shall insist that in the course of conservator appointment proceedings that Mr. Berman's office be conducted as a probate court rather than an employment agency for spite-spewing housewives

and accounting profession drop-outs frenetically seeking to loot the estates of the incapacitated elderly in the limited time afforded by end of life circumstances.

How hypocritical of Mr. Berman to conclude his letter by invoking the name of Dr. Parsons, for he is precisely the physician referenced in the next to last paragraph of page 2 of my letter. I hereby serve notice on Mr. Berman that the residents of West Hartford will not tolerate assaults on the professional reputations of their physicians or interference with the physician-patient relationship by probate court cronies such as housewives devoid of any medical training, licensing and competence whose discredited attacks are motivated by lust for conservator fees.

Because Mr. Berman and his referenced cronies comprise a continuing menace to West Hartford's substantial concentration of the elderly, I once again exercise my demand, protected by the First Amendment, that Mr. Berman submit his resignation immediately as such action is in the best interest of my community.

The Complainant responded to the Respondent's answer regarding the issue of whether the Respondent had been acting as an attorney by submitting a November 13, 2000 letter enclosing three Probate Court documents in which the Respondent indicated that he was an attorney. The Respondent, in turn, replied to the November 13, 2000 letter on November 22, 2000, stating that the documents submitted by the Complainant established only that the Respondent was acting in a pro se capacity before the Probate Court.

At the April 3, 2001 hearing on this matter, the Respondent testified and submitted documents as to his dealings with the Complainant regarding his mother, Jean Notopoulos, as Ms. Notopoulos' health deteriorated in 1998 and 1999. The Respondent expressed his extreme displeasure at a number of actions taken by the Complainant during the course of the probate proceedings. When the Respondent made an application for conservatorship, supported by a report from a court-appointed attorney, Robert Farr, the Complainant permitted, over the Respondent's objection, a state social worker to appear and be heard. The social worker, whom the Respondent described as "an unshaven buffoon with his gut hanging out over his belt," objected to the Respondent's appointment as conservator. Ultimately, the Respondent was appointed as conservator of the estate, though not as conservator of the person.

The Respondent objected to the Complainant's appointment of two "professional conservators," Carolyn Levine and Denny Fuller, as agents of the Probate Court to investigate the care and assets of the Respondent's mother. The Respondent described Ms. Levine as one of the Complainant's "cronies" who lacked training and competence and who had a financial interest in being "cut into" the estate for conservator fees. The Respondent believes that if the Complainant wanted a disclosure of his mother's assets, it should have been made by the Respondent or by the court-appointed attorney. However, he believes that the disclosure that his mother had between \$400,000.00 and \$500,000.00 in assets "triggered a feeding frenzy." The Respondent believed Ms. Levine's report would be outcome determinative on the issue of the appointment of a conservator, and that the Complainant "sent this woman in to sniff the catnip." The Respondent maintained in a January 21, 2000 letter to the Complainant that Ms. Levine's behavior was driven by a "lust for conservator fees" and that the West Hartford Probate Court was "clearly awash in financial conflicts of interest."

The Respondent did not await the report from Ms. Levine but rather retained counsel, because it was clear to the Respondent that the Complainant was going to "corrupt the integrity" of the conservator appointment process. The Respondent stated that at a continuation of the hearing on the appointment of a conservator, on January 19, 1999, Ms. Levine's behavior was "reprehensible and self-serving" and included personal attacks on the Respondent. The Respondent believes Ms. Levine's testimony at that hearing was refuted by the testimony of the nurse's aides he had hired for his mother's care. At that hearing, at which the Respondent was represented by counsel, the Respondent also stated that he believed that Ms. Levine had a conflict of interest due to her knowledge of, and reaction to, the assets of the Respondent's mother. However, the Respondent acknowledged that the Complainant did not, in fact, appoint Ms. Levine as a conservator. Rather, the Complainant appointed Denny Fuller. The Respondent testified that he, the Respondent, had already taken care of the statutory duties of a conservator, and that Mr. Fuller was sent in "to loot and exploit" what he could prior to his removal or the death of the Respondent's mother. The Respondent maintained that Mr. Fuller conferred no benefit upon the Respondent's mother, but rather simply "manufactured" a bill in the amount of \$3,285.00 during the course of approximately nine weeks.

The Respondent further testified that at a status conference at the Probate Court on January 25, 1999, the Complainant threatened to impose a substantial cash bond on the Respondent or to order a psychiatrist to examine the Respondent's mother, in order to coerce the Respondent into paying a \$350.00 bill from Ms. Levine. The Respondent maintained there was no legal authority for the payment of the bill. The Respondent likened this to criminal

extortion. The Respondent also accused the Complainant of interfering with his mother's physician/client relationship with Dr. Julian Parsons, based on the recommendation of Ms. Levine that another physician conduct an evaluation of the Respondent's mother.

It is the decision of this reviewing committee, by clear and convincing evidence, that the Respondent has violated the Rules of Professional Conduct. Rule 8.2(a) prohibits a lawyer from making "a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer ...." The reviewing committee rejects the Respondent's argument that the U.S. Constitution's First Amendment protections entirely abrogate the provisions of Rule 8.2(a) and provide absolute immunity to a lawyer's criticism of judges and courts. Rather, the reviewing committee holds to the line of cases that have rejected the absolute immunity concept within the context of attorney disciplinary actions. In re Disciplinary Action Against Graham, 453 N.W.2d 313 (Minn. 1990), cert. denied, sub nom Graham v. Weraz, 498 U.S. 820, 111 S.Ct. 67, 112 L.Ed.2d 41 (1990); Matter of Westfall, 808 S.W.2d 829 (Mo. banc 1991), cert. denied, 502 U.S. 1009, 112 S.Ct. 648, 116 L.Ed.2d 665 (1991); In re Howard, 912 S.W.2d 61 (Mo. banc 1995); see also, In re Evans, 801 F.2d 703 (4<sup>th</sup> Cir. 1986), cert. denied, 480 U.S. 906, 107 S.Ct. 1349, 94 L.Ed.2d 520 (1987); Matter of Holtzman, 577 N.E.2d 30 (Ct. App. N.Y.), cert. denied, 502 U.S. 1009 112 S.Ct. 648, 116 L.Ed.2d 665 (1991); Kentucky Bar Association v. Heleringer, 602 S.W.2d 165 (Ky. 1980), cert. denied, 449 U.S. 1101, 101 S.Ct. 898, 66 L.Ed.2d 828 (1981). This line of caselaw has sought to balance a lawyer's free speech rights with the state's interest in maintaining public confidence in the administration of justice. See e.g., Westfall, 808 S.W.2d at 835-36; Heleringer, 602 S.W.2d at 167-68. In so doing, these cases have rejected the "subjective malice" standard used in defamation cases pursuant to New York Times v. Sullivan; 376, U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964); applying instead an objective standard of what a reasonable attorney would do in the same or similar circumstances. Graham, 453 N.W.2d at 321-22; Holtzman, 577 N.E.2d at 33-34. Accordingly, these cases hold that statements by a lawyer made with a reckless disregard for their truth are not protected by the First Amendment.

In determining what constitutes "reckless disregard", this reviewing committee is guided by the decision of Judge McWeeny in the matter of Burton v. Statewide Grievance Committee, 1998 Ct. Sup. 10929, Docket No. CV97-0573377 (Memorandum of Decision, September 24, 1998), *reversed and remanded on other grounds*, 60 Conn. App. 698 (2000). Judge McWeeny reviewed many of the cases cited above and concluded that "a lawyer may not

impugn the integrity of judges without a reasonable basis to do so.” Memorandum of Decision, p. 15. The Judge went on to state that:

The plaintiff was not burdened with the task of disproving the grievance, but rather with offering some evidence substantiating her claims. The absence of a reasonable factual basis for the charges demonstrates the reckless disregard for the truth. See In re Whiteside, 386 F.2d 805, 806 (2d Cir. 1967), cert. denied, 391 U.S. 920 (1968), reh. denied, 393 U.S. 898 (1968); In the Matter of Garringer, 626 N.E.2d 809, 812 (Indiana 1994), cert. denied, [513] U.S. [826], 115 S.Ct. 93, 130 L.Ed.2d 44 (1994).

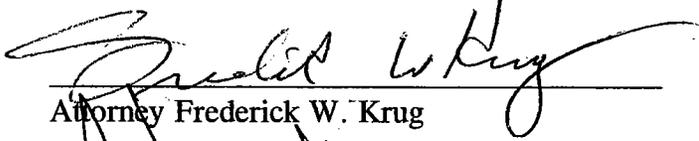
Applying these principals, this reviewing committee concludes that the statements of the Respondent in this matter were made without a reasonable factual basis and were therefore recklessly made in violation of Rule 8.2(a) of the Rules of Professional Conduct.

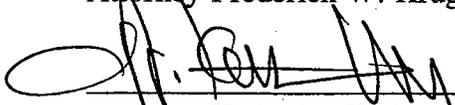
The evidence presented by the Respondent established that the Respondent disagreed vehemently with the appointment of agents of the Probate Court by the Complainant, and with the actions of those agents. In the absence of rebuttal testimony, had the Respondent limited his statements to those issues, the decision in this matter might have been different. However, the Respondent went well beyond this and directly attacked, without any reasonable substantiation, the integrity of the Complainant and of the West Hartford Probate Court. The use of phrases such as “prostituted the integrity of his office,” “reprehensible extortion,” “Medicare fraud,” and “demonstrated financial predator,” are direct allegations of misconduct against the Complainant for which there was no substantiation whatsoever. The Respondent charged the West Hartford Probate Court with “rampant financial conflicts of interest,” but his only support was his subjective belief that Ms. Levine was motivated by a desire for conservator fees, and he acknowledged that Ms. Levine was not, in fact, appointed as a conservator. The Respondent attributed “venal and avaricious” motives not just to the Complainant’s “cronies” but to the Complainant himself, without providing a scintilla of evidence that the Complainant had any such interest. The Respondent’s claim for “extortion” was premised on a purported threat to increase the probate bond or order a psychiatric evaluation. This reviewing committee notes that probate court powers regarding bonds and examinations are set forth in the Connecticut General Statutes at Sections 45a-139 and 45a-132a, respectively. On this issue, as with many other of the Respondent’s complaints, the reviewing committee is in full agreement with the position of the Complainant, that the Respondent had a variety of legal recourses if he was dissatisfied with any of the

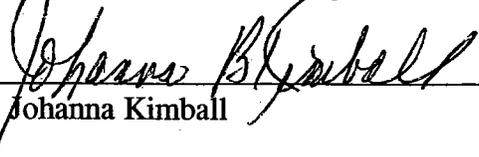
Complainant's actions in the underlying matter. Having chosen not to contest these issues in the appropriate forums, the Respondent cannot now claim that the Complainant's actions were in violation of the law and of the Code of Probate Judicial Conduct. The reviewing committee finds, by clear and convincing evidence, that the Respondent's statements were, as charged by the Complainant, personal attacks and slurs against the Complainant and the West Hartford Probate Court, in violation of both the spirit and the letter of the Rules of Professional Conduct.

Accordingly, this reviewing committee concludes that the Respondent, in his letter of September 8, 2000, violated Rule 8.2(a). The reviewing committee further finds that the Respondent's abusive and insulting attacks upon the integrity of the Complainant and the West Hartford Probate Court constitute conduct prejudicial to the administration of justice, in violation of Rule 8.4(4), and conduct intended to disrupt a tribunal, in violation of Rule 3.5(3). In so doing, the reviewing committee rejects the Respondent's legal argument that Rule 3.5 is limited to situations in which an attorney is acting in a representative capacity. Rule 3.5 itself makes no such distinction, and regardless of whether an attorney is acting on his own behalf or on behalf of another, he has an obligation to comport himself in a professional manner. The reviewing committee also rejects the Respondent's argument that there could be no disruption of the court because the probate matter had concluded. The reviewing committee notes that the September 8 letter itself indicates that issues remained outstanding, and that the Respondent acknowledged that he was not aware of the discharge of the fiduciaries when he wrote his letter.

It is the decision of this reviewing committee that the Respondent be reprimanded for violating Rules 8.2(a), 8.4(4) and 3.5(3) of the Rules of Professional Conduct.

  
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Attorney Frederick W. Krug

  
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Attorney Katherine Webster O'Keefe

  
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Ms. Johanna Kimball