

STATEWIDE GRIEVANCE COMMITTEE

Marilyn Halley  
Complainant

vs.

Jon C. Leary  
Respondent

Grievance Complaint #07-0156

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 July 2, 2008. The hearing addressed the record of the complaint filed on February 16, 2007 and the probable cause determination rendered by the New Britain Judicial District and Judicial District of Hartford for Geographical Area #12 and the towns of Avon, Bloomfield, Canton, Farmington and West Hartford Grievance Panel on June 26, 2007, finding that there existed probable cause that the Respondent violated Rules 1.3 and 1.4 of the Rules of Professional Conduct.

This matter was originally scheduled for a hearing on October 3, 2007, but was continued at the request of the Respondent. The matter was thereafter scheduled for a hearing on January 10, 2008 but was continued at the request of Disciplinary Counsel. The matter was rescheduled for March 5, 2008 and was continued at the request of the Complainant and the Respondent. A hearing was then scheduled for April 2, 2008 and was continued at the request of Disciplinary Counsel due to the Complainant's unavailability. Notice of the July 2, 2008 hearing was mailed to the Complainant, to the Respondent and to the Office of the Chief Disciplinary Counsel on June 2, 2008. Pursuant to Practice Book §2-35(d), former Assistant Disciplinary Counsel Frank P. Blando and Assistant Disciplinary Counsel Suzanne B. Sutton pursued the matter before this reviewing committee. The Complainant and the Respondent appeared at the hearing and testified. The reviewing committee also heard testimony from Vivian Flowers, a friend of the Complainant. Three exhibits were admitted into evidence.

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

The Complainant and her ex-husband were divorced in Florida in 1999. Pursuant to the Florida divorce decree, the Complainant believed her ex-husband, a resident of Connecticut, owed her money for alimony and a loan she had given to the Floridan Corporation, a family held corporation incorporated in Connecticut. In April 2003, the Complainant consulted with the Respondent to pursue these claims. The Respondent advised the Complainant that to pursue her claims for alimony owed under the divorce decree, she should consult with a Florida lawyer and obtain a contempt finding against her ex-husband in Florida, which could be enforced in Connecticut. However, the Respondent did agree to try to collect money owed the Complainant under the divorce decree in connection with the settlement of her stock interest in the Floridan Corporation and the loan to Floridan Corporation. The Respondent filed a lawsuit to collect these debts.

In October 2003, the Complainant's ex-husband passed away and the Respondent named the ex-husband's estate in the pending lawsuit. This lawsuit was subsequently withdrawn per the Complainant's instructions. In April of 2004, the Complainant requested the Respondent represent her and file her claims against her ex-husband's estate in probate court. The Respondent filed a notice of claims with the executrix of the ex-husband's estate, but reiterated to the Complainant the difficulty of pursuing some of the divorce related claims without a Florida finding of contempt, which had not been obtained.

On February 10, 2006, the ex-husband's estate denied the Complainant's claims in probate court. In a March 10, 2006 e-mail to the Complainant, the Respondent notified the Complainant in writing that her claims had been rejected. The Respondent did not tell the Complainant what options she had to continue pursuing her claims or provide her with a deadline or timeframe in which to decide. The Respondent was not sure what the statute of limitations was to appeal the denial of the Complainant's claims. The Respondent instead asked the Complainant to let the Respondent know what she wanted to do. The Respondent never followed up with the Complainant to give her a deadline to pursue her claims nor did he lay out her specific legal options. No appeal of the denial of the probate claims was filed.

In 2005, the Complainant asked the Respondent to pursue an eviction for unpaid rent due on the property owned by the Floridan Corporation. The Respondent initiated an eviction, but refused to pursue the matter further after determining the Complainant's authority to act on behalf of the corporation was unclear.

This reviewing committee also considered the following:

The Complainant testified, at length, that she did not understand from her communication with the Respondent in the March 10, 2006 e-mail that it was her probate claims that had been denied. The Complainant testified that she was not aware of the denial of the probate claims until January 2007. The Complainant further testified that she was not told of her option to appeal the denial within 120 days of the denial. The Complainant claimed that she did not receive a copy of the February 10, 2006 letter denying the claims until months later when she went to the probate court herself. The Complainant indicated that she then requested copies of the correspondence from the Respondent which were provided. Then the Complainant explained that by the time she realized the probate claims had been denied, the appeal period had expired.

The Respondent testified that it is his custom to telephone a client after receiving communications such as the denial of the Complainant's probate claims, but he could not specifically recall doing so in this instance. The Respondent explained that it is not his customary practice to generate correspondence as follow up to phone conversations. In his March 10, 2006 e-mail, the Respondent refers to the denial of claims letter. At the hearing, the Respondent testified that he thought the Complainant understood that letter to be about her probate claims. The Respondent testified that he did not specifically advise the Complainant about the 120 day appeal period, because he was awaiting the Complainant's instructions on how to proceed. The Respondent explained that he thought at the time that the appeal period was 60 days or less, but also believed that there was a second right to appeal to superior court that was available for one year. The Respondent further explained that his subsequent research

indicated that the only appeal period was for 120 days.

This reviewing committee finds that the Respondent engaged in unethical conduct by clear and convincing evidence:

This reviewing committee concludes that the Respondent violated Rule 1.3 of the Rules of Professional Conduct by failing to act with reasonable diligence in representing the Complainant and violated Rule 1.4 by failing to clearly communicate with the Complainant in regards to the denial of her probate claims.

Pursuant to Rule 1.3, a lawyer must pursue a claim with commitment and dedication to the client and take whatever lawful and ethical actions necessary to vindicate the client. In this case, the record shows by clear and convincing evidence that the Respondent did not pursue the Complainant's claims in probate court after their denial, nor did he give the client sufficient information to allow her to determine whether or not she wished to continue to pursue her claims. Rather, the Respondent placed the burden on the Complainant to analyze her options and determine the deadlines to pursue her claims. The Respondent did not clearly convey to the Complainant that her probate claims had been denied in February 2006 and that she had 120 days from the date of denial to file an appeal of that decision. The Respondent admitted that he failed to research the appeal period. The Respondent violated Rule 1.3 of the Rules of Professional Conduct because he was not reasonably diligent in ascertaining the appeal period for the denial of the probate claims. Because the Respondent was wrong about the appeal period, he could not properly advise the Complainant of her options.

Pursuant to Rule 1.4, a lawyer must provide a client with sufficient information to make informed decisions. In this case, the record shows by clear and convincing evidence that the Respondent failed to communicate to the Complainant the deadline for pursuing her claim against the estate or her legal options once the claim was denied in violation of Rule 1.4 of the Rules of Professional Conduct. The Respondent did send the Complainant an e-mail telling her that her claims had been denied. However, the Respondent was handling multiple claims for the Complainant and the e-mail did not sufficiently inform the Complainant of her legal options. This reviewing committee is also critical of communicating an important development by only e-mailing the Complainant. The Respondent testified that he did not mail a letter to the Complainant communicating the denial of claims and advising her of her legal options after his phone conversation with her. The Respondent could not specifically recall the phone conversation with the Complainant discussing the denial. The ambiguity and lack of guidance in the e-mail did not give the Complainant enough information to make an informed decision.

This reviewing committee concludes that the record does not substantiate a finding by clear and convincing evidence, that the Respondent violated the Rules of Professional Conduct in regards to the other matters that the Complainant requested the Respondent handle. There was insufficient evidence to conclude that the Respondent had not adequately communicated the status of the Complainant's other claims or that the failure to act was caused by the Respondent's lack of diligence. The record contained correspondence over several years from

the Respondent to the Complainant detailing the legal problems with collecting both the Complainant's unpaid alimony and support claims and the past due rents owed to the Floridan Corporation. In the future we remind the Respondent to provide clients with a retainer agreement that defines the scope of the representation that the Respondent has undertaken.

Since this reviewing committee concludes that the Respondent engaged in unethical conduct, we order the Respondent to attend, in-person and at his own expense, a continuing legal education course in the area of probate law. The course must consist of a minimum of at least three credit hours and must be completed 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 continuing legal education course.

(E)

DECISION DATE: \_\_\_\_\_

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Attorney Margarita Moore