STATEWIDE GRIEVANCE COMMITTEE

Rita Kruk Complainant	:	
vs.	:	Grievance Complaint #09-0276
John Evans 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, 1061 Main Street, Bridgeport, Connecticut on January 6, 2010, March 3, 2010, June 2, 2010 and September 29, 2010. The hearing addressed the record of the complaint filed on March 17, 2009, and the probable cause determination rendered by the Stamford Norwalk Judicial District Grievance Panel on June 15, 2009, finding that there existed probable cause that the Respondent violated Rules 1.15(a)(5)(e) and 8.1(2) of the Rules of Professional Conduct as well as Practice Book §2-32(a)(1).

This matter was initially scheduled for a hearing on September 2, 2009. The hearing was continued at the request of Disciplinary Counsel and the Respondent. The matter was then scheduled for November 4, 2009. That hearing was continued at the request of Disciplinary Counsel and the Respondent. Notices of the January 6, 2010, March 3, 2010, June 2, 2010 and September 29, 2010 hearing dates were mailed to the Complainant, to the Respondent and to the Office of the Chief Disciplinary Counsel on December 7, 2009, February 5, 2010, May 3, 2010, and August 2, 2010, respectively.

Pursuant to Practice Book §2-35(d), First Assistant Disciplinary Counsel Patricia A. King pursued the matter before this reviewing committee. Both the Complainant and the Respondent appeared and testified. The Complainant's counsel, Attorney Nicholas Wocl, appeared at the March 3, 2010 hearing. The reviewing committee also heard testimony from Attorney Jeffrey Sklarz, Edward Kruk and Migdalia Rodriguez. Twenty five exhibits were admitted into evidence.

Reviewing committee member Attorney Thomas Maxwell was not available for the hearing. First Assistant Disciplinary Counsel and the Respondent waived the participation of Attorney Maxwell in the consideration and decision of this matter. Accordingly, the matter was considered and decided by the undersigned.

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

In 2002, the Complainant hired the Respondent to pursue two employment matters for her, an employment discrimination claim and an Employee Retirement Income Security Act ("ERISA") claim regarding the denial of long-term disability benefits.

The Complainant and Respondent negotiated a fee agreement whereby the Complainant would pay the Respondent $1,200 per month as a retainer and the Respondent would be entitled to one third of any proceeds he recovered. The fee agreement further stated the retainer would serve as a credit against any recovery. The Respondent began work on the Complainant's case and filed suit in federal court. After several years of litigation and discovery, the parties tried the claims to the court. The Complainant lost the employment discrimination claim. The District Court found the defendant arbitrarily and capriciously denied the Complainant's long term disability claim under ERISA and remanded her claim for reconsideration. The Court also determined the Complainant was entitled to attorney's fees. In December of 2005, the Court awarded $77,344.83 in attorney's fees and costs. The award was offset by costs in connection with the employment discrimination case. Counsel for the defendant sent the Respondent a check for $75,058.50.

Throughout the representation, the Complainant and her husband made monthly payments to the Respondent until May of 2005 when they were no longer able to afford the monthly payments due to lack of employment. In September of 2005, the Respondent agreed the Complainant need not continue to pay $1,200/month due to her financial situation. The Respondent was aware the Complainant had not worked for several years and her husband had recently become unemployed as well, their financial situation was not good. In March of 2006, the Respondent prepared a settlement statement and met with the Complainant and her husband. The settlement statement indicated the following amounts were distributed:

Settlement Check	$75,058.50
Expenses to Respondent	$ 7,193.03
Additional fee to Respondent	$ 8,450.60[1]
Amount to Complainant	$59,414.87

Respondent also received $49,400.00 from monthly payments by the Complainant. The record was unclear as to who paid the expenses of the lawsuit, although they appear on this statement as a credit to the Respondent. The Complainant reimbursed the Respondent at least $800 for expenses in a check written on December 13, 2004. That credit is not reflected on the Respondent's settlement statement. Accordingly, the Respondent split the

[1] $4,600 outstanding minimum fee and $3,850.60 as an additional contingency fee.

$75,058.50 recovery as follows: $57,850.60 for himself; $7,193.03 reimbursement of expenses to himself; and $10,014.87 for the Complainant. The Respondent also returned the retainer of $49,400 to the Complainant.

At some point after the court awarded attorney's fees, the attorney-client relationship between the Complainant and the Respondent broke down. The Complainant believed the Respondent was no longer working on her file. The Complainant believed she was entitled to a credit of approximately $23,000 for the amount of the retainer she had paid above the one third contingency fee. The Respondent stopped working on the Complainant's file because he believed the Complainant should continue to pay him a retainer of $1,200/month. In May of 2006, the parties formalized the withdrawal of the Respondent as attorney and the Complainant hired the law firm of Zeisler & Zeisler (hereinafter "Successor Counsel") to pursue her case on remand.

The fee agreement with Successor Counsel indicated the Complainant agreed to pay a flat fee of $5,000 along with the greater of one third of the present cash value of the total recovery or all court awarded attorneys' fees.

After the Complainant hired new counsel, the Respondent refused to cooperate with Successor Counsel and did not provide a copy of the file to Successor Counsel; he demanded Successor Counsel escrow any future proceeds on the file under the theory that he would still be entitled to either one third of any future total recovery, or the fair market value of his services at an hourly rate. The Respondent estimated he was entitled to $105,500, if he had charged an hourly rate for his services on the ERISA claim. Successor Counsel obtained an award of $99,956.81 in June of 2007. In September of 2007, Successor Counsel wrote to the Respondent and offered to escrow half of the Complainant's interest in the funds and arbitrate the Respondent's claim for additional fees. He offered to continue to escrow any future funds as well using the same formula. The Respondent refused to release his lien on any of these funds. None of those funds were released to the Complainant. Thereafter, the Complainant filed a second federal lawsuit against her employer appealing the decision to deny her long term disability payments based on her physical disability.

In 2006 and 2007, Successor Counsel asked the Respondent for his file, but it was never provided. Successor Counsel also asked the Respondent to account for his legal fee, time, costs and expenses and analysis of what, if any, future fee he would be entitled to. The Respondent failed to send them an accounting. He did send them a letter indicating he was entitled to $105,500 in hourly fees as well as a pro rata portion of all fees collected.

In 2009, the Complainant filed this grievance complaint claiming the Respondent had overcharged her in March of 2006. The Respondent failed to file an answer to the grievance complaint despite receiving notice of the complaint on March 20, 2009. On September 1, 2009, several months after probable cause was found, the Respondent filed

an answer. On September 2, 2009, a hearing was scheduled in this matter but was continued to see if the parties could resolve the fee dispute civilly or through negotiations. As of August 31, 2009, Successor Counsel held $104,364.75 in escrow. To date, the Respondent has not authorized the release of any of these funds.

In October of 2009, the Respondent filed a lawsuit against the Complainant and Successor Counsel claiming the Complainant had been unjustly enriched by his services and owed him more than $200,000 and requesting a judicial determination at to whom the funds held by Successor Counsel belonged.

Thereafter, hearings were scheduled on this matter on January 6, 2010, March 3, 2010, June 2, 2010 and September 29, 2010. At the hearings, Respondent interrupted witnesses, opposing counsel and reviewing committee members in an improper way.

He attempted to introduce evidence regarding the Complainant's psychiatric condition for the sole purpose of embarrassing the witness. The reviewing committee asked him to brief this issue, which he failed to do in a timely manner. The reviewing committee then issued the following ruling: "[T]he reviewing committee finds that the Respondent has waived this argument and will hear nothing further regarding the Complainant's psychiatric history and will deny any further attempts to place the Complainant's psychiatric reports into the record." The Respondent moved for reconsideration and the reviewing committee denied the motion. When it became clear the reviewing committee had ruled against him on this issue, the Respondent attempted to circumvent the ruling by issuing a subpoena to the Complainant's doctor to appear at the March 2, 2010 hearing, and attempting to introduce a letter regarding the Complainant's psychiatric condition after the Complainant's counsel had been excused on March 2, 2010.

Respondent refused to listen to objections and rulings in a proper way, he offered commentary on the case during cross-examination and he admonished the reviewing committee when he disagreed with their rulings.

The Respondent was admonished multiple times by this reviewing committee that he could not interrupt Disciplinary Counsel when she was making an objection or the reviewing committee when it was making a ruling, nor could he editorialize, interrupt or characterize the testimony of witnesses during cross-examination. See January 6, 2010 Tr. at 21 (cautioned for interrupting the witness during Disciplinary Counsel's direct); Id. at 35 (admonished for not allowing the Complainant to answer questions that the Respondent asked); Id. at 36 (admonished for not allowing the Complainant to answer questions that the Respondent asked); Id. at 46 (characterizing the witness' testimony); Id. at 48 (interrupting Disciplinary Counsel); Id. at 55 (interrupting this reviewing committee's questions for the witness); Id. at 58 (interrupting Disciplinary Counsel and this reviewing committee); Id. at 68-69 (interrupting the witness and Disciplinary Counsel); Id. at 70 (asking the witness to answer question after Disciplinary Counsel objected and before this

reviewing committee made a ruling); Id. at 75-76 (interrupting this reviewing committee's questions for the witness; the Respondent states, "unbelievable"); Id. at 82-83 (this reviewing committee cautions the Respondent that he is off-topic and should focus on the probable cause findings); Id. at 94 (interrupting Disciplinary Counsel); Id. at 108-109 (interrupting Disciplinary Counsel); Id. at 124 (interrupting Disciplinary Counsel).

See also March 3, 2010 Tr. at 16 (interrupting Disciplinary Counsel); Id. at 76 (interrupting Disciplinary Counsel); Id. at 84 (interrupting Disciplinary Counsel and accused her of coaching the witness); Id. at 102 (arguing with the witness).

See also June 2, 2010 Tr. at 23-25 (interrupting Disciplinary Counsel); Id. at 26 (interrupting this reviewing committee); Id. at 28-31 (interrupting this reviewing committee); Id. at 34-35 (interrupting the witness and Disciplinary Counsel); Id. at 40-41 (repetitive questioning of the Complainant); Id. at 42 (ignoring this reviewing committee's prior ruling); Id. at 56-58 (interrupting this reviewing committee); Id. at 60-61 (interrupting this reviewing committee); Id. at 64 (interrupting Disciplinary Counsel); Id. at 71 (interrupting the witness and this reviewing committee); Id. at 77 (interrupting Disciplinary Counsel); Id. at 107 (interrupting the witness); Id. at 120 (interrupting the witness); Id. at 129 (interrupting Disciplinary Counsel); Id. at 132-137 (repeatedly interrupting this reviewing committee and editorializing).

See also September 29, 2010 Tr. at 20 (interrupting Disciplinary Counsel); Id. at 24-25 (ignoring this reviewing committee); Id. at 72-73 (interrupting this reviewing committee); Id. at 77 (continuing to talk after Disciplinary Counsel made objection).

The Respondent also failed to comply with the request that he make evidence available to Disciplinary Counsel. At the hearing in January of 2010, the committee asked the Respondent to exchange evidence with Disciplinary Counsel. January 6, 2010 Tr. at 120-123. He failed to do so. At the hearing in March of 2010, the committee asked the Respondent to exchange evidence with Disciplinary Counsel and informed him that, under Rule 7 of the Statewide Grievance Committee Rules of Procedure, disclosure and submission of evidence must be made seven days before the hearing. He failed to do so. In June of 2010, the Respondent insisted he was unable to find the Committee's Rules of Procedure and had not exchanged any evidence. After reviewing the notice of the hearing, the Respondent acknowledged Rule 7 of the Statewide Grievance Committee Rules of Procedure had been sent to him. The Respondent did not comply with the reviewing committee's request until September 21, 2010, eight days before the last hearing.

This reviewing committee also considered the following:

The Respondent has been reprimanded by the Statewide Grievance Committee or the Court five times. See Wilson v. Evans, Grievance Complaint #01-0370 (June 20, 2003) (Respondent reprimanded for violating Rule 8.4(3) when he spent down his account

in an attempt to bounce a check); Milord v. Evans, Grievance Complaint #01-0933 (August 24, 2003) (Respondent reprimanded for violating Rule 1.3 of the Rules of Professional Conduct when he failed to help client in eviction process because he found the fee insufficient for the work required); Paulino v. Evans, Grievance Complaint #08-0043 (December 5, 2008) (Respondent reprimanded for violating Rule 1.16 of the Rules of Professional Conduct when he continued to represent Complainant after being discharged); Fairfield JD Grievance Panel v. Evans, Grievance Complaint #08-0208 (January 9, 2009) (Respondent reprimanded for violating Rule 1.15(b) of the Rules of Professional Conduct and Practice Book §2-27(a) when he paid himself fees from his trust account prior to receiving the settlement check); French v. Evans, Grievance Complaint #08-0250 (June 5, 2009) (Respondent presented for violating Rules 1.1, 1.3 and 8.4(4) for lying to a client about settlement negotiations and failing to pursue the matter within the statute of limitations; Court subsequently reprimanded the Respondent).

This is the Respondent's nineteenth grievance complaint. The Respondent's assistant testified that it was her responsibility to answer the grievance complaint and that she failed to mail an answer to the Complaint in a timely manner. At the time this grievance complaint was filed, the Respondent was being divorced and was on psychiatric drugs for depression, ADD, anti-anxiety and bipolar disorder. The Respondent no longer takes much of this medication. The Respondent did not offer an explanation as to why he did not file an answer to the complaint after probable cause was found and before a hearing was scheduled in the matter.

Disciplinary counsel's argued that the parties' fee agreement was controlling and not the award from the court. The attorney's fee recovered should have been split pursuant to the contingency clause of the fee agreement. The Respondent improperly claimed a legal fee from the subsequent proceeds Complainant received based on Successor Counsel's work.

Respondent's argued that he was entitled to the entire court award of attorney's fees and the Complainant was not entitled to any reimbursement of the retainer because the case had not concluded. He then asserted that he was defrauded and forced to compromise and return the Complainant's retainer and give her a portion of the court award. The Respondent argued that he should have been entitled to the full amount of attorney's fees awarded, namely $75,058.50, as well as one-third of any recovery the Complainant receives in the future. In the alternate, the Respondent argued that he was entitled to over $200,000 in additional fees under a theory of quantum meruit if that amount is more than what he would have collected under the contract. The Respondent argued that the Complainant profited from his time and work spent on the file and he only agreed to the March 3, 2006 accounting because he believed he would receive more money after the case was remanded. He believed that the Complainant took advantage of his generosity and then fired him. Finally, the Respondent maintained he is entitled to a pro rata portion of Successor Counsel's contingency fee for all future recoveries on this file.

This reviewing committee concludes by clear and convincing evidence that the Respondent engaged in unethical conduct and violated the Rules of Professional Conduct. We find clear and convincing evidence that the Respondent violated Rules 1.15(b) (2006) and 8.1(2) of the Rules of Professional Conduct as well as Practice Book §2-32(a)(1).

Rule 8.1(2) and Practice Book Section 2-32(a)(1):

The evidence shows that the Respondent failed to answer the grievance complaint within thirty days of the date notice of the grievance complaint was sent to the Respondent. We find that the Respondent's explanation that he was being divorced, on numerous psychiatric medications and that his assistant failed to answer the complaint does not establish good cause for why the Respondent failed to answer the complaint. This grievance complaint was the nineteenth grievance complaint filed against the Respondent. The Respondent is well-versed in the time restrictions and requirements of an attorney who has been grieved. Respondent's explanation for his failure to answer the grievance complaint raises more questions than it answers. We do not believe the Respondent has established good cause for why he failed to answer the grievance complaint.

Rule 1.15:

Rule 1.15(b) of the 2006 Rules of Professional Conduct states: "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. [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 party, shall promptly render a full accounting regarding such property."

Rule 1.15 of the Rules of Professional Conduct was substantially amended on June 26, 2006 and the effective date of those changes was September 1, 2006. It is clear from the Grievance Panel's decision finding probable cause that they were referring to subsection (b) of Rule 1.15 of the 2006 Rules of Professional Conduct. The exact same language is now contained in Rule 1.15(e). We note that the Respondent did not request the Grievance Panel articulate the precise Rule it meant by Rule 1.15(a)(5)(e); the underlying findings support this charge and the precise language has remained the same since before 2002 when the Respondent's representation began.

While the Respondent is entitled to fair notice of the charges against him, the record indicates he was aware of the conduct being investigated.

> [A] hearing such as this is not the trial of a criminal or civil action or suit, but an investigation by the court into the conduct of one of its own officers, and that, therefore, while

> the complaint should be sufficiently informing to advise the court of the matters complained of, and the attorney of the charges made against him, it is not required that it be marked by the same precision of statement, or conformity to the recognized formalities or technicalities of pleadings, as are expected in complaints in civil or criminal actions."
> Statewide Grievance Committee v. Presnick, 18 Conn. App. 316, 327-328 (1989) citing Grievance Committee of the Bar of New Haven County v. Sinn, 128 Conn. 419, 424-25, 23 A.2d 516 (1941).

Furthermore, since this reviewing committee is ordering a presentment, the Respondent is entitled to defend himself against these charges at a trial de novo.

There is clear and convincing evidence that the Respondent did not properly account for the Complainant's recovery according to the terms of the fee agreement. "[T]he fiduciary relationship between an attorney and a client requires 'absolute perfect candor, openness and honesty, and the absence of any concealment or deception.' (citations omitted). Disciplinary Counsel v. Smigelski, 124 Conn. App. 81, 90 (2010). Under the rule of contra proferentem, ambiguities in a contract are construed against the party who had drafted the contract in the fiduciary context of the attorney-client relationship. See David M. Somers & Assocs. P.C. v. Busch, 283 Conn. 396, 405, n.10 (2007).

In determining what a proper accounting would be, we reviewed the Respondent's fee agreement. We found the Respondent's fee agreement was ambiguous as to whether or not an award of attorney's fees would be treated as part of the "recovery" or treated in some different manner. Since any ambiguity in the contract must be construed in favor of the Complainant, we determine the fee agreement states the Respondent was entitled to a minimum fee of $1,200/month as well as one third of any recovery less the minimum fee already paid. Said recovery includes any award of attorney's fees.

For example, if the Complainant paid a minimum fee of $50,000 and thereafter there was a recovery of $300,000, then the Respondent would receive $50,000 from the recovery and keep the minimum fee that had been earned. The Complainant would keep the remaining $250,000. If the recovery was $30,000, then the Complainant would be entitled to the entire $30,000 because the Respondent had already received a fee of $50,000. Under the terms of the fee agreement if the Respondent had received a minimum fee of $50,000, then he would not be entitled to share the recovery if it was less than $150,000.

The evidence here shows that the Respondent received a minimum fee from the Complainant of $49,400. She owed him an additional minimum fee of $4,600 and thereafter, the Respondent waived the monthly payment of a minimum fee. The entire

recovery obtained by the Respondent for the Complainant was $75,058.50. The parties met in March of 2006, to apportion the recovery. The Respondent was entitled to receive any expenses he had paid, as well as any amount owed him on his minimum fee. Because a contingency fee on this amount was less than his minimum fee, he was not entitled to any other portion of this recovery as an additional legal fee. At the meeting with the Complainant, the Respondent did not provide an accounting for all of the fees and expenses that he had received from the Complainant, nor did the Respondent provide an accounting of any expenses he had paid in advance. The Respondent received $7,193.03 for expenses. Additionally, the Respondent took a contingency fee from the recovery of $3,850.60, even though the minimum fee he had already been paid was more than the earned contingency fee. All together the Respondent took a legal fee of $57,850.60 and expenses of $7,193.03. We find clear and convincing evidence that the Respondent failed to deliver to the Complainant the funds she was entitled to receive from the initial recovery of attorney's fees.

After the attorney-client relationship broke down, the Respondent refused to cooperate with Successor Counsel and refused to provide an accounting for any future fee he believed he was entitled to receive. The Respondent never turned over the Complainant's file to her Successor Counsel despite the fact he had been paid throughout the representation and Successor Counsel agreed to protect his fee. The Respondent then claimed a lien on the entire recovery Successor Counsel obtained for the Complainant. The Respondent refused to allow any of the funds to be released to Successor Counsel or the Complainant. We find the Respondent did not provide the Complainant or her Successor Counsel with a proper accounting for his time, expenses and analysis of any future fee, to which he might be entitled.

Disciplinary counsel argued that the award of attorney's fees concluded a discrete portion of the Complainant's case, the Respondent was paid for his work and the Respondent had no further financial interest in the next proceeding of the Complainant's case. The Respondent's position was that his initial work on this case added value to the Complainant's future proceedings and he is entitled to a further fee based on subsequent awards. To that end, he has claimed a lien on the entire award received by the Complainant and refuses to release any portion of the money. He has placed the dispute in court through an interpleader action[2].

Although we make no determination as to the exact fee, if any, that should be awarded, we cannot find a good faith basis for Respondent's claim and lawsuit that he is

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[2] We decline to make a determination as to what additional fee, if any, would be reasonable under these factual circumstances. That legal question is currently in front of a civil court in John Evans v. Rita Kruk, Judicial District of Stamford-Norwalk at Stamford, Docket No. FST-CV09-5013016-S. We believe that the Superior Court is a more appropriate forum for the resolution of this fee dispute.

entitled to the entire recovery the Complainant has received to date as well as more than $100,000 in additional legal fees. Respondent's inability to explain the calculation of his contingency fee award as well as the basis for his lawsuit claiming the entire recovery the Complainant has received to date supports the inference that he is aware of its impropriety. See Disciplinary Counsel v. Smigelski, 124 Conn. App. 81, 91 (2010) ("[T]he defendant's failure to provide a coherent explanation of his calculation of his contingency fee supports the inference that he was fully aware of its impropriety. The record thus supports the court's conclusion that the defendant violated rule 1.5.").

The well-settled case law in Connecticut is that an attorney is not entitled to receive payment for services he has not rendered.

> An attorney at law is an officer of the court; a minister of justice. He is entitled to fair compensation for his services, but since, because of the highly confidential relationship, the client may discharge him even without just cause, he should receive reasonable compensation for the work he has done up to that point, and not the agreed fee he probably would have earned had he been allowed to continue in his employment. This rule is not unfair to the attorney. He will receive fair compensation for what he has done; his position as an officer of the court does not entitle him to receive payment for services he has not rendered.
> Cole v. Myers, 128 Conn. 223 at 230 (1941).

An attorney cannot claim fees from a client under quantum meruit when there is an express contract for the legal fee. "A party may not recover the reasonable value of services rendered, pursuant to the doctrine of quantum meruit, when the actions for which it seeks relief were governed by an express contract." David M. Somers & Assocs. P.C. v. Busch, 283 Conn. 396, 408 (2007); See also Schoonmaker v. Brunoli, 265 Conn. 210 (2003).

The Respondent has not provided any coherent explanation for why his legal fee on a contingency contract would be equal to $100,000 more than the entire recovery to date other than to speculate that in the future the Complainant's disability claim may be worth $825,000, and to discount the value of Successor Counsel's time of nearly five years working on the case. Nor has he provided case law to indicate he is entitled to more than what he would have received if he had been allowed to continue in his employment. By our calculations, the entire recovery the Complainant has received to date is $175,014. One third of that amount is $58,338. To date, the Respondent has received $57,850.60 as well as expenses of $7,193.03, for which he failed to provide the Complainant with an accounting.

This reviewing committee finds clear and convincing evidence that the Respondent has violated Rule 1.15(b) of the 2006 Rules of Professional Conduct, by not providing the Complainant with a proper accounting of his fees and expenses on March 6, 2006, by failing to give the Complainant the portion of the recovery she was entitled to on March 6, 2006, by failing to provide the Complainant and Successor Counsel with an accounting of his fees, expenses and legal theory as to why he was entitled to an additional fee, and by failing to turn over the Complainant's file to Successor Counsel despite receipt of the minimum fee as well as an agreement by Successor Counsel to protect his fee.

We also find that the following aggravating factors apply to the Respondent's conduct: 1) he has an extensive prior disciplinary history; 2) he was motivated by his own selfish interest and refuses to release any portion of the Complainant's subsequent recovery to her; and 3) the vulnerability of the victim, in that the Respondent was aware that the Complainant and her husband had unemployment problems and severe financial hardships, but he overcharged them on March 6, 2006 and failed to provide a proper accounting. He then refused to release his claim on any portion of her subsequent recovery, although there is no good faith basis under the fee agreement for why he might be entitled to more than one-third of that recovery less the fee he already received, or $487[3].

We also considered whether the Respondent violated Rules 3.5(4) or 8.4(4) of the Rules of Professional Conduct, which prohibits a lawyer from intentionally disrupting a tribunal or engaging in conduct prejudicial to the administration of justice. The Statewide Grievance Committee is an arm of the superior court. The courts have delegated to this tribunal the investigation and discipline of attorneys. As an officer of the court, the Respondent must abide by the legal process as well as rulings from the committee. While he is certainly entitled to make a record for any subsequent review and present a defense, he is not entitled to ignore rules and rulings of the tribunal. Practice Book §2-35 allows for Disciplinary Counsel and the Respondent to offer witnesses and evidence subject to reasonable cross examination. The reviewing committee is charged with making evidentiary decisions.

In this case, the reviewing committee explained the courtroom procedure and admonished the Respondent over thirty times for not following this procedure and refusing to abide by rulings of the reviewing committee. Although this reviewing committee found the Respondent tried our patience and was unprofessional, we decline to make additional findings regarding his conduct before the Statewide Grievance Committee. We would caution the Respondent that his behavior before this tribunal was unbecoming of an officer of the court.

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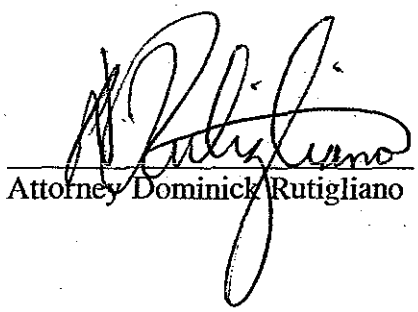
[3] See Footnote 2. We offer no opinion on whether the Respondent has any financial interest in the $99,956.81 obtained by Successor Counsel or any future recoveries the Complainant may receive or whether the Respondent has already been overpaid since that issue is now before the Superior Court.

Since we conclude that the Respondent violated Rules 1.15(b)(2006) and 8.1(2) of the Rules of Professional Conduct and Practice Book §2-32(a)(1), 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.

(D)
EMR

DECISION DATE: 11.19.10



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