STATEWIDE GRIEVANCE COMMITTEE

Ann Marie Adams
Complainant :

vs. : Grievance Complaint #09-0673

Joseph Moniz :
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 April 8, 2010. The hearing addressed the record of the complaint filed on July 27, 2009, and the probable cause determination filed by the Hartford Judicial District Grievance Panel for Geographical Area 13 and the town of Hartford on October 27, 2009, finding that there existed probable cause that the Respondent violated Rules 1.3, 1.4, 1.5 and 8.1 of the Rules of Professional Conduct and Practice Book §2-27(a)(1).

This matter was originally scheduled for hearings on January 14, 2010 and February 11, 2010, but were continued at the request of Disciplinary Counsel and the Respondent, respectively. The matter was thereafter scheduled for a hearing on April 8, 2010. Notice of the April 8, 2010 hearing was mailed to the Complainant, to the Respondent and to the Office of the Chief Disciplinary Counsel on March 2, 2009. Pursuant to Practice Book §2-35(d), Assistant Disciplinary Counsel Suzanne Sutton pursued the matter before this reviewing committee. The Complainant appeared at the hearing and testified. The Respondent did not appear at the hearing. At the hearing, this reviewing committee notified the parties that the grievance panel's finding regarding Practice Book §2-27(a)(1) appeared to be a typographical error since Section 2-27(a) does not contain a subsection (1). Furthermore, the language references the Respondent's failure to answer the grievance complaint, which implicates a violation of Practice Book §2-32(a)(1). Accordingly, the parties were advised that our review of the Respondent's failure to respond to the grievance complaint would be analyzed under Practice Book §2-32(a)(1).

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

The Complainant retained the Respondent on October 10, 2008 to obtain five documents on her behalf, which she needed by November 5, 2008 for an on-line story she was writing for publication on November 7, 2008. The documents concerned an incident that occurred on October 7, 2008. The documents included: a copy of a Hartford dispatch center tape, a copy of a report from the fire department, a copy of a report from AMR ambulance

service, a copy of a security tape from Carabetta Management and a medical report from St. Francis Hospital. The Complainant paid the Respondent $500 to obtain these documents. The Respondent did not provide the Complainant with a written fee agreement. The Respondent subsequently advised the Complainant that he could not obtain the medical records. The Respondent never provided the Complainant with the remaining documents.

Following the November 7th deadline, the Complainant called the Respondent's office almost every week requesting the status of obtaining the remaining documents. The Respondent advised the Complainant that he had faxed the remaining four documents to her. The Complainant, however, never received the fax and the Respondent failed to provide the Complainant with proof that the fax had been sent. From November 2008 to July 2009, the Complainant called and emailed the Respondent requesting the status of the matter. The Respondent either failed to respond to the Complainant's communications or advised the Complainant that he was in a meeting and would return her call at a later time. The Respondent eventually agreed to provide the Complainant with a refund of her retainer, but never did.

The Complainant subsequently filed this grievance complaint against the Respondent on July 27, 2009. On July 31, 2009, a copy of the grievance complaint was sent by certified mail to the Respondent at the last office address registered with the Statewide Grievance Committee. The Respondent was advised of his duty under Practice Book §2-32(a)(1) to respond to the grievance complaint within thirty days. The delivery receipt reflects that the Respondent signed for the letter on September 2, 2009. The Respondent did not file a written response to the grievance complaint as directed.

This reviewing committee also considered the following:

Disciplinary Counsel requested that this reviewing committee order a presentment and add a finding that the Respondent engaged in the unauthorized practice of law in violation of Rule 5.5 of the Rules of Professional Conduct. Disciplinary Counsel maintained that the Complainant sent emails to the Respondent and telephoned the Respondent following the Respondent's suspension from the practice of law on February 19, 2009.

This reviewing committee concludes by clear and convincing evidence that the Respondent engaged in unethical conduct. The record before this reviewing committee reflects that the Respondent agreed to obtain certain documents on behalf of the Complainant that she required in order to write an on-line story. Furthermore, the Respondent undertook the representation knowing that the matter was time-sensitive and that the documents were needed in approximately one month's time. The Respondent, however, failed to provide the Complainant with any of the documents, even after the requested deadline had passed. Although the Respondent advised the Complainant that he had faxed the documents to her, the Complainant never received the fax and the Respondent never provided proof that the fax had been sent. Furthermore, the Respondent never resent the documents to the Complainant. We

find the Respondent's failure to provide the Complainant with any of the requested documents constitutes a lack of diligence in violation of Rule 1.3 of the Rules of Professional Conduct.

The record also supports a finding by clear and convincing evidence that the Respondent failed to keep the Complainant reasonably informed regarding the status of the matter and failed to comply with the Complainant's reasonable requests for information. The Complainant made numerous telephone calls to the Respondent's office and sent several emails to the Respondent regarding the status of the matter. The Respondent either failed to respond to the Complainant's communications or advised the Complainant that he would return her call at a later time. We conclude that the Respondent's failure to respond to the Complainant's inquiries violates Rule 1.4(a)(3) and (4) of the Rules of Professional Conduct.

This reviewing committee further concludes by clear and convincing evidence that the Respondent's $500 retainer fee was unreasonable in violation of Rule 1.5(a) of the Rules of Professional Conduct. The record reflects that the Respondent never obtained any of the documents he was retained to provide. In addition, the record is devoid of any evidence to indicate that the Respondent even attempted to obtain these documents. This reviewing committee also concludes that the Respondent's failure to submit a written response to the grievance complaint constitutes a violation of Rule 8.1(2) of the Rules of Professional Conduct and Practice Book §2-32(a)(1).

In addition to the Rules cited by the grievance panel, this reviewing committee concludes by clear and convincing evidence that the Respondent failed to provide the Complainant with a written retainer agreement in violation of Rule 1.5(b) of the Rules of Professional Conduct. We were unable to conclude, as Disciplinary Counsel requested, that the record also supported a finding of the additional charge that the Respondent violated Rule 5.5 of the Rules of Professional Conduct. Although the Complainant sent correspondence to the Respondent following his suspension from the practice of law, the record does not indicate that the Respondent responded to these communications.

This reviewing committee concludes that the Respondent's violations of Rules 1.3, 1.4(a)(3) and (4), 1.5(a) and 8.1(2) of the Rules of Professional Conduct and Practice Book §2-32(a)(1) warrant a presentment. Accordingly, we direct Disciplinary Counsel to file a presentment against the Respondent in the Superior Court for the imposition of whatever discipline the court may deem appropriate. Since the presentment will be a trial de novo, we further direct Disciplinary Counsel to include the additional violation of Rule 1.5(b) found by this reviewing committee.

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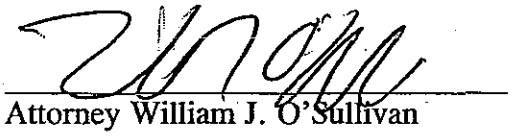
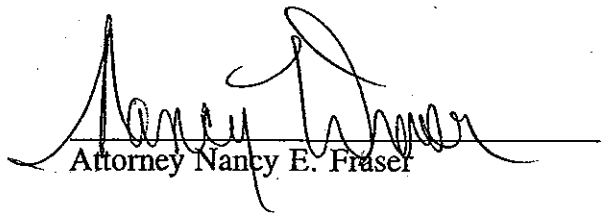
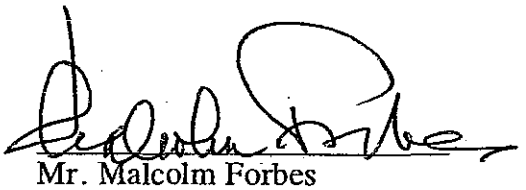
DECISION DATE: 6/11/10



Attorney William J. O'Sullivan



Attorney Nancy E. Fraser



Mr. Malcolm Forbes