

STATEWIDE GRIEVANCE COMMITTEE

Robert Cassotto  
Complainant

vs.

Grievance Complaint #09-0708

John Williams  
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 March 3, 2010. The hearing addressed the record of the complaint filed on August 7, 2009, and the probable cause determination rendered by the New Haven Judicial District Grievance Panel for the towns of Bethany, New Haven & Woodbridge on December 22, 2009, finding that there existed probable cause that the Respondent violated Rules 1.1, 1.3, and 1.4 of the Rules of Professional Conduct.

Notice of the March 3, 2010 hearing was mailed to the Complainant, to the Respondent and to the Office of the Chief Disciplinary Counsel on February 5, 2010. Pursuant to Practice Book §2-35(d), Chief Disciplinary Counsel Mark Dubois pursued the matter before this reviewing committee. The Complainant and Respondent appeared and testified. Two exhibits were admitted into evidence.

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

The Complainant was employed by the United States Postal Service. He believed that he was subject to discrimination and retaliation by co-workers for complaints he had made to the postal service's Equal Employment Opportunity office. Because the Complainant believed his co-workers were acting in an inappropriate manner towards him, he began to tape conversations with his co-workers and supervisors. He collected over 11,000 minutes or 183 hours of conversations at work. The Complainant hired the Respondent to pursue a lawsuit against his employer for discrimination and retaliation. During this time period, the Complainant also hired the Respondent to pursue civil actions against his co-workers individually.

The Complainant paid the Respondent \$7,500 and agreed to pay one third of any award the Respondent was able to obtain for the lawsuit against his employer (Cassotto v.

Grievance Complaint #09-0708

Decision

Page 2

Potter<sup>1</sup>). The Complainant also paid the Respondent \$5,000 and agreed to pay one third of any award the Respondent was able to obtain for each lawsuit against a co-worker. The Respondent filed six separate lawsuits against co-workers—five in state court and one in federal court (Cassotto v. Pompeii). In total, the Complainant paid the Respondent \$37,500 to pursue these seven matters. In addition, if the Respondent was successful on any of these matters, he was entitled to a fee of one-third of the total award.

The Complainant told the Respondent that he had a large number of taped conversations that he believed contained helpful evidence that could be used in his cases. The Respondent did not believe listening to all of the tapes was an efficient use of his time or resources. He told the Complainant to find specific sound bites that could be used to impeach the witnesses for the defense on cross-examination in Cassotto v. Potter. The Complainant prepared four two minute segments of tape that the Respondent could use for cross-examination. The Respondent did not listen to these sound bites to determine if they contained useful evidence. As the trial date approached, the Respondent and his associate still had not listened to any of the tapes or offered them to the defense as evidence. The Respondent told the Complainant that if he brought the tapes and a tape recorder to court, then the tapes could be used to impeach witnesses. The Complainant brought some of the tapes to the courthouse for his trial. The Respondent and his associate still did not listen to the tapes. The Respondent did not use the tapes during the trial. In the closing statement of Cassotto v. Potter, defense counsel discredited the Complainant's position by noting that although the Complainant had recorded numerous conversations with his co-workers and supervisors, he had failed to produce the recordings as evidence. In the bathroom after the trial, the Respondent explained to the Complainant that he had not wanted to use the tapes because he believed the tapes were more likely to harm the client's case by prejudicing the jury than to help the case.

In Cassotto v. Pompeii, the Respondent filed the Complainant's case against his co-worker, in his individual capacity, as the Complainant wished. This case was filed in federal court because of diversity between the parties. The matter was placed on Judge Hall's docket because she was handling the Cassotto v. Potter matter. In an e-mail dated January 22, 2009, the Respondent told the Complainant that the government was claiming the lawsuits were improper because the employees had engaged in the conduct at work and that it would seek sanctions in the case. On February 15, 2009, the Respondent sent the Complainant an e-mail saying that the government had taken the position that the defendant was acting within the scope of his federal employment and the case would likely be dismissed because of a sovereign immunity defense. In a status conference, Judge Hall informed the Respondent that the government's argument was unassailable and the matter would either be dismissed with prejudice or he could withdraw it without prejudice. If he did not withdraw the matter, the Respondent might have faced sanctions. The Respondent

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<sup>1</sup> John E. Potter is the current Postmaster General. Lawsuits regarding employment discrimination by postal workers are brought against the Postmaster General.

Grievance Complaint #09-0708

Decision

Page 3

chose to withdraw the matter without prejudice. He explained to the Complainant that the matter had been dismissed. The Complainant found out that the complaint had been withdrawn and not dismissed.

The reviewing committee also considered the following:

The Respondent testified that he tried a very good case for the Complainant in Cassotto v. Potter. He believed that the case had merit and stood to be successful, but unfortunately the jury disagreed. The Respondent stated that the Complainant never provided the recordings in a coherent usable format or with an index. The Respondent testified that in his opinion the failure to use the tapes was a trial strategy to minimize any prejudice the jury might form against the Complainant for taping his co-workers. Finally, the Respondent stated that he might have used the tapes Complainant brought to court along with a "boombox" on the day of trial but they were not even appropriately cued up to be used on cross-examination.

The Respondent further testified that there was still an action pending in federal court on behalf of the Complainant also entitled Cassotto v. Potter and that he believed the case had merit and could be successful<sup>2</sup>.

This reviewing committee concludes by clear and convincing evidence that the Respondent violated the Rules of Professional Conduct.

Cassotto v. Potter

We find there is clear and convincing evidence that the Respondent violated Rule 1.4 of the Rules of Professional Conduct by failing to keep the client reasonably informed about his trial strategy in Cassotto v. Potter.

The evidence shows that the Complainant was determined to collect evidence of his co-worker's conduct and use those recordings to restore his reputation. The Complainant repeatedly contacted the Respondent to ask about the use of the tape recordings. The Respondent led the Complainant to believe that these recordings were very useful to the case. The Respondent led the Complainant to believe that the tape recordings would definitely be used at trial. We do not credit Respondent's statement that he might have used the tapes on cross-examination if they had been appropriately cued. This reviewing committee does not find it credible that a 42 year veteran of the bar would have played cued up tapes on cross-examination that he had not first listened to with his co-counsel.

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<sup>2</sup> This involved separate employment decisions by the postal service.

We credit the Respondent's testimony that he did not believe the use of the tapes would be helpful to the Complainant's case. There is merit to the argument that the failure to use the tapes was an appropriate trial strategy to minimize any prejudice the jury might form against the Complainant for taping his co-workers. Accordingly, we do not believe that the failure to use the tape-recordings violated Rules 1.1 or 1.3 of the Rules of Professional Conduct.

If there was any chance that the Respondent intended to use the Complainant's tapes during the trial, we believe it would have been incompetent and dilatory to not listen to the relevant portion of the tapes before the trial. However, since we believe the Respondent made the decision to not use the tapes as part of a trial strategy, we do not find that the failure to listen to the tapes was incompetent or dilatory. Instead as noted above, the Respondent's lack of candor with the Complainant about his trial strategy violated Rule 1.4 of the Rules of Professional Conduct.

This reviewing committee is critical of the Respondent for the exclusive use of e-mail in communicating with the Complainant regarding this issue. Given the Complainant's determination to use the tapes even if they harmed his case, the Respondent should have written a formal letter to the Complainant explaining the trial strategy and stating clearly that he had no intention of using the tapes. We are also critical of the Respondent for not listening to the eight minutes of tape that the Complainant wanted to play for him prior to determining that the tapes were not useful. The Complainant may have been more willing to accept the trial strategy if he knew that his lawyer had at least listened to the recordings and explained why the tapes were not useful.

For all the foregoing reasons, we find insufficient evidence that Respondent violated Rules 1.1 or 1.3 of the Rules of Professional Conduct because the Respondent chose not to use the Complainant's tape recordings as part of his trial strategy. We do find by clear and convincing evidence that the Respondent violated Rule 1.4 of the Rules of Professional Conduct by failing to convey his trial strategy to the Complainant prior to the conclusion of the trial even though he knew how important the tape recordings were to the Complainant. We are also critical of the Respondent for communicating exclusively by e-mail regarding this issue and for failing to listen to the four sound-bites the Complainant had prepared and to offer his legal opinion as to whether the sound-bites would be useful on cross-examination.

Cassotto v. Pompeii

We next turn our attention to the Respondent's actions in Cassotto v. Pompeii. There is insufficient evidence to demonstrate that the Respondent violated Rule 1.4 in connection with his representation of the Complainant in this matter.

There is insufficient evidence in the record that the Respondent did not reasonably explain the status of this lawsuit and the reason for the withdrawal. The Respondent did send an e-mail to the Complainant explaining the defendant's position as well as the judge's decision. While we do not find a rule violation, we are critical of the Respondent for not adequately explaining to the Complainant the unlikelihood of success in regard to any of his lawsuits against co-workers in their personal capacity. From the record, all of these complaints appear to be borderline frivolous and highly unlikely to be successful. The Respondent took \$30,000 from the Complainant to file these lawsuits. Under the circumstances, as noted above, we believe the Respondent should have written a formal letter to the Complainant explaining why these lawsuits were so unlikely to succeed so that the Complainant could make an informed decision about whether or not he should spend money pursuing these matters.

Nevertheless, there is insufficient evidence that the Respondent failed to provide adequate communication with the Complainant regarding the decision to withdraw the Cassotto v. Pompeii case.

Since we conclude that the Respondent violated Rule 1.4 of the Rules of Professional Conduct, we reprimand the Respondent. This reviewing committee also expresses concern that the Respondent continues to represent the Complainant in a number of related lawsuits, of which, at least one appears to have some merit. Since this reviewing committee is disciplining the Respondent for his lack of communication with the Complainant, it appears a potential conflict of interest has arisen. We would caution the Complainant and the Respondent to consider their respective positions and determine whether they wish to continue an attorney-client relationship. We further recommend that if the parties do wish to continue to work together that a written conflict of interest waiver be prepared and signed in accordance with Rule 1.7 of the Rules of Professional Conduct.

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DECISION DATE: 3/26/10

Grievance Complaint #09-0708  
Decision  
Page 6

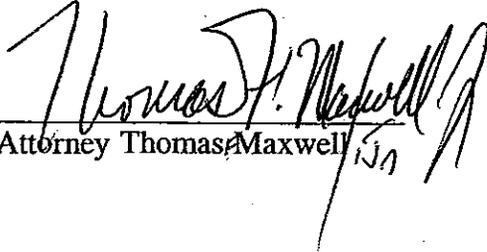


Attorney Dominick Ruffigliano

Grievance Complaint #09-0708

Decision

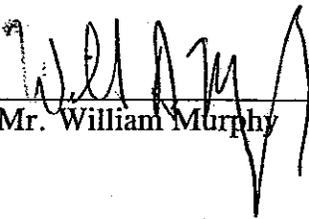
Page 7

  
Attorney Thomas Maxwell

Grievance Complaint #09-0708

Decision

Page 8

  
Mr. William Murphy