

STATEWIDE GRIEVANCE COMMITTEE

Fairfield Judicial District Grievance Panel

Complainant

vs.

Grievance Complaint #09-0803

George Lawler

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 June 1, 2010. The hearing addressed the record of the complaint filed on September 10, 2009, and the probable cause determination filed by the New Haven Judicial District Grievance Panel for Geographical Area 7 and the towns of Branford, East Haven, Guilford, Madison and North Branford on February 1, 2010, finding that there existed probable cause that the Respondent violated Rules 1.15(b) and 8.1(2) of the Rules of Professional Conduct and Practice Book §§2-27(b) and (c) and 2-32(a)(1).

Notice of the hearing was mailed to the Complainant, to the Respondent and to the Office of the Chief Disciplinary Counsel on May 3, 2010. Pursuant to Practice Book §2-35(d), First Assistant Disciplinary Counsel Patricia King pursued the matter before this reviewing committee. The Respondent appeared at the hearing and testified. One exhibit was admitted into evidence.

Reviewing committee member William Carroll recused himself from participating in this matter. Both Disciplinary Counsel and the Respondent, however, waived the participation of a third reviewing committee member and agreed to have the undersigned render this decision.

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

On October 8, 2008, People's United Bank notified the Statewide Grievance Committee of an overdraft in the Respondent's IOLTA account. The overdraft occurred on October 6, 2008, when check #11989 for \$375 made payable to Richard A. Principe Appraiser was presented for payment. The check was paid resulting in an overdraft of approximately \$59. The Respondent learned of the overdraft on October 8, 2008 and deposited \$75 into the account to cure the overdraft.

On October 30, 2008, Attorney Frances Mickelson-Dera of the Statewide Grievance Committee sent a notice of the overdraft to the Respondent and requested that the Respondent provide a written explanation of the overdraft and documentary evidence within ten days. The

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Respondent responded on November 6, 2008 and stated that the overdraft was caused by a mathematical error in balancing the account. The Respondent maintained that he neglected to consider administrative charges assessed by the bank.

On November 26, 2008, Attorney Mickelson-Dera responded and requested that the Respondent provide the bank statements showing the fees charged by the bank and the statements showing that the fees were reimbursed. Attorney Mickelson-Dera also requested a copy of the bank statements and checks for September and October of 2008. The Respondent responded on December 13, 2008, advising that he was out-of-state and did not have access to the bank statements, but would provide them in mid-February when he returned to Connecticut.

Failing to receive the bank statements in February, Attorney Mickelson-Dera sent a letter to the Respondent on March 20, 2009 requesting the documents by March 30, 2009, or the matter would be forwarded to a grievance panel. On March 26, 2009, the Respondent provided on-line copies of the September and October 2008 bank statements and copies of the checks. The bank statements provided by the Respondent did not show any administrative charges to the account. The September statement showed a \$12.24 service charge that was waived and the October statement indicated that there were no service charges imposed against the account. Thereafter, on April 20, 2009, the matter was sent to a grievance panel for further investigation. In a letter sent to grievance panel counsel on April 20, 2009, Attorney Mickelson-Dera explained that the matter had been forwarded to the grievance panel for further investigation because the Respondent had provided computer printout bank statements and not the actual bank statements. Furthermore, the statements showed three "NEACH" withdrawals on September 29, 2008: (1) \$750 to Chase; (2) \$250 to HSBC Card Services; (3) \$250 to Capital One.

On July 6, 2009, the investigating grievance panel provided the Respondent with a copy of Attorney Mickelson-Dera's April 20, 2009 letter and requested that the Respondent address Attorney Mickelson-Dera's concerns and provide the requested documents. The Respondent responded on July 10, 2009 and stated that all of the funds in the IOLTA account as of August 30, 2008 (\$103.09) belonged to the Respondent. The Respondent maintained that there was no activity in the account until he deposited a check for \$4,219.70 on September 25, 2008, representing payment of foreclosure committee fees and expenses. The Respondent maintained that he started disbursing funds on September 29, 2008 to pay the costs, fees and expenses associated with the foreclosure file. The Respondent further maintained that the three electronic "NEACH" withdrawals were made to the Respondent's credit card companies to pay foreclosure committee expenses that the Respondent had previously charged. Thereafter, on October 6, 2008, check #11989 was presented for payment and resulted in an overdraft, which the Respondent corrected. The account went to a zero balance on October 18, 2008 and was closed on November 1, 2008.

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On August 1, 2009, the investigating grievance panel requested that the Respondent provide copies of the invoices for the foreclosure committee expenses and copies of the credit card statements evidencing the credit card payments by August 10, 2009. On August 5, 2009, the Respondent requested an additional forty-five days to respond. By letter dated August 10, 2009, the grievance panel denied the Respondent's request for an extension. Thereafter, on September 10, 2009, the grievance panel filed the instant grievance complaint.

The Respondent responded to the grievance complaint on October 5, 2009. Thereafter, on December 24, 2009, the grievance panel requested that the Respondent provide a detailed itemization, with supporting documentation of all disbursements made regarding the foreclosure committee fees and expenses and a detailed explanation, with supporting documentation, of the three "NEACH" withdrawals. The grievance panel requested this information be provided within ten days. The Respondent responded on January 11, 2010 requesting an additional thirty days to respond. On January 26, 2010, the grievance panel advised the Respondent that his January 11<sup>th</sup> correspondence was not considered by the grievance panel, since it had already reviewed and decided the Respondent's matter on January 14, 2010.

After the grievance panel's probable cause determination was filed, this matter was scheduled for a hearing before the undersigned reviewing committee on April 6, 2010. This reviewing committee granted the Respondent's request for a continuance. Thereafter, by letter dated April 16, 2010, this reviewing committee ordered the Respondent to provide the following documentation and answers by May 14, 2010:

1. A copy of the official complete bank statement from People's United Bank for the months of September, 2008 and October, 2008;
2. A copy of the official complete bank statement from Peoples' United Bank for the month in which the Respondent was charged a bank fee that he failed to account for in his client ledger;
3. The name of the foreclosure file in which the Respondent received a check for \$4,219.70 and a copy of the client ledger showing the payment of expenses by the foreclosure committee. In addition, a copy of all the invoices and receipts paid for with the proceeds of this check;
4. A detailed itemization, with supporting documentation, of all disbursements made regarding the committee fees and expenses in the amount of \$4,219.70;
5. A detailed explanation, with supporting documentation, regarding the three "NEACH" withdrawals on September 29, 2008, payable to Chase, HSBC and Capital One;

6. A list of the payments made by the Respondent using credit cards on behalf of the foreclosure committee totaling \$1,250;

7. An explanation as to why three different credit cards were used to charge expenses of the foreclosure committee.

The Respondent did not respond to the letter or provide the requested documents.

This reviewing committee also considered the following:

In his written response to the grievance complaint, the Respondent maintained that he explained to Attorney Mickelson-Dera that the overdraft was caused by a mathematical error. The Respondent further maintained that he provided Attorney Mickelson-Dera with copies of the bank statements and checks she requested. The Respondent stated that Attorney Mickelson-Dera never requested that he provide original statements and checks. The Respondent contended that he was unable to provide the investigating grievance panel with copies of the committee's expenses and credit card statements because the August 1, 2009 letter did not give him sufficient time to comply. The Respondent maintained that he detailed the difficulty in obtaining these documents and requested a continuance, which was denied. The Respondent further maintained that he was willing to provide the additional documentary evidence to any subsequent panel. The Respondent testified that the foreclosure committee funds were not client funds but he put them in his IOLTA account because he had closed his operating account. The Respondent contended that since there were no client funds in the IOLTA account, Practice Book §2-27 does not apply.

At the hearing before this reviewing committee, the Respondent produced a disbursement statement showing how the \$4,219.70 committee fee was disbursed. The statement indicated that all of the disbursements were made by checks drawn on the Respondent's IOLTA account, except for the disbursement to the Connecticut Post for the auction notice. This disbursement for \$602.20 was not paid by check. The Respondent indicated that he may have paid it with his credit card. The Respondent testified that he did not provide the credit card statements because the credit card companies charge \$65 an hour to research and copy statements older than six months and \$25 to mail the statements. The Respondent testified that he could not recall whether the "NEACH" withdrawals were to pay the foreclosure committee's expenses in this matter or another foreclosure committee matter.

This reviewing committee concludes by clear and convincing evidence that the Respondent engaged in unethical conduct. The record before this reviewing committee indicates that the funds in the Respondent's IOLTA account belonged to the Respondent and were not client funds. Rule 1.15(b) of the Rules of Professional Conduct, however, prohibits an attorney from depositing personal funds in an IOLTA account, unless the funds are for the sole purpose of paying bank service charges on the account. The Respondent testified that the funds in the IOLTA account

belonged to him and were not clients' funds. Accordingly, we conclude that the Respondent violated Rule 1.15(b) of the Rules of Professional Conduct by depositing personal funds in his IOLTA account.

This reviewing committee further concludes that the Respondent failed to keep complete records of the maintenance and disposition of funds held in his IOLTA account in violation of Practice Book §2-27(b) and Rule 1.15(b) of the Rules of Professional Conduct. The fact that the Respondent placed his personal funds in the IOLTA account does not absolve him from the recordkeeping requirements of these rules. The records required to be maintained by Practice Book §2-27(b) allow the Statewide Grievance Committee to determine if the account is being used properly. The Respondent cannot argue that the recordkeeping rules do not apply to him because he misused the account by placing his personal funds in the account. If the account is an IOLTA account, it is subject to the recordkeeping requirements of the rule. In this case, the Respondent failed to provide records regarding the maintenance and disposition of funds in the IOLTA account. Specifically, the Respondent failed to provide a receipt and disbursement journal identifying all deposits and withdrawals from the account and showing the running balance of the account as required by Practice Book §2-27(b)(1). The Respondent maintained that the overdraft was caused by a mathematical error in balancing the account. Yet, the Respondent failed to produce the receipt and disbursement journal showing this mathematical error. In addition, the Respondent maintained that the error was due to the assessment of bank administrative charges. However, the Respondent failed to provide the bank statements showing these administrative charges as requested by Attorney Mickelson-Dera in her November 26, 2006 letter. The September and October 2008 bank statements produced by the Respondent reflect that no service charges were deducted from the account during that two-month period. The Respondent's failure to produce these records leaves this reviewing committee to conclude that the Respondent did not properly maintain these records in violation of Practice Book § 2-27(b) and Rule 1.15(b) of the Rules of Professional Conduct.

This reviewing committee concludes that the Respondent also violated Rule 8.1(2) of the Rules of Professional Conduct by failing to produce documents requested by the Statewide Grievance Committee and grievance panel counsel. On November 26, 2008 and March 20, 2009, Attorney Mickelson-Dera requested that the Respondent provide the bank statements evidencing the bank fees charged that caused the overdraft. The Respondent never provided these bank statements. Thereafter, on August 1, 2009, the investigating grievance panel requested that the Respondent provide the credit card statements showing when the Respondent charged the advances for the committee expenses. The Respondent failed to supply these statements to the grievance panel. On December 24, 2009, after the grievance complaint was filed, the grievance panel requested a detailed explanation, with supporting documentation, of the three "NEACH" withdrawals. The Respondent failed to provide any documentation regarding these payments. These credit card statements were necessary, since all of the foreclosure committee expenses were paid by check, except for the \$602.20 payment to the Connecticut Post, and this payment did not

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correspond to any of the three credit card payments. Accordingly, the Respondent's explanation that the three credit card payments were made in connection with foreclosure committee expenses was never substantiated. In his written answer to the grievance complaint, the Respondent maintained that he did not produce the credit statements because he needed additional time to produce them but was "ready and willing" to do so. The Respondent, however, made no attempt to do so and appeared at the June 1, 2010 hearing without these documents. Accordingly, we conclude that the Respondent's failure to produce these documents as requested by Attorney Mickelson-Dera and the grievance panels constitutes a violation of Rule 8.1(2) of the Rules of Professional Conduct and Practice Book §2-27(c).

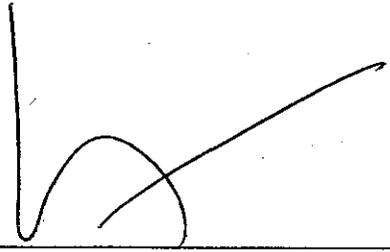
This reviewing committee was unable to conclude that the Respondent's failure to produce the additional documents requested by the grievance panel on December 24, 2009 constituted a violation of Practice Book §2-32(a)(1). Practice Book §2-32(a)(1) requires an attorney to submit a written response to the grievance complaint within thirty days. The record reflects that the Respondent submitted a timely response to the grievance complaint on October 5, 2009. Accordingly, we conclude that the Respondent did not violate Practice Book §2-32(a)(1).

Since this reviewing committee concludes that the Respondent violated Rules 1.15(b) and 8.1(2) of the Rules of Professional Conduct and Practice Book §2-27(b) and (c), we reprimand the Respondent.

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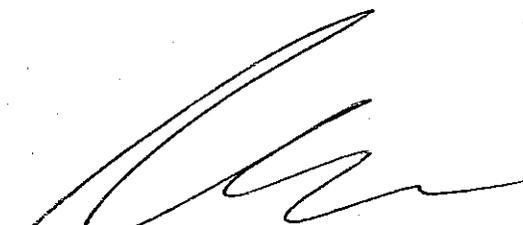
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Attorney Noble Allen

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Attorney Margarita Moore