

STATEWIDE GRIEVANCE COMMITTEE

Michael P. Bowler,
Statewide Bar Counsel
Complainant

:

vs.

:

Grievance Complaint #09-1016

Peter Clark
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 November 19, 2009, and the probable cause determination filed by the Danbury Judicial District Grievance Panel on January 22, 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(a) 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 March 2, 2010. Pursuant to Practice Book §2-35(d), Assistant Disciplinary Counsel Suzanne Sutton pursued the matter before this reviewing committee. The Complainant did not appear at the hearing. The Respondent appeared and testified.

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

On August 27, 2009, Naugatuck Savings Bank notified the Statewide Grievance Committee of an overdraft in the Respondent's IOLTA account. The overdraft occurred on August 26, 2009, when check #7133, made payable to the Town Clerk of Woodbury in the amount of \$123, was presented for payment against insufficient funds and returned. Later that day, the bank notified the Statewide Grievance Committee that the overdraft notice should be ignored because the Respondent had made a deposit into his account.

On September 2, 2009, Assistant Bar Counsel Frances Mickelson-Dera sent notice of the overdraft to the Respondent and requested a written explanation within ten days. Failing to receive a response, Attorney Mickelson-Dera sent a second request to the Respondent on September 23, 2009. Thereafter, on Tuesday, October 6, 2009, the Respondent sent an email

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to Attorney Mickelson-Dera stating that he would send a response by the end of the week. Attorney Mickelson-Dera responded on October 7, 2009 and advised that if the response was not received by October 9th, a grievance complaint would be filed.

The Respondent filed his response on October 9, 2009, stating that the overdraft occurred in connection with a refinance. The Respondent provided his August 2009 bank statement with his answer. The Respondent explained that on August 14, 2009, he deposited a cashier's check from Wells Fargo in the amount of \$67,049.55 into his IOLTA account and issued check #7133 to the Town of Woodbury for a recording fee in connection with the refinance. Wells Fargo later determined that the check was written for an incorrect amount and placed a stop payment order on the check. This caused the overdraft of the \$123 check to the Town Clerk of Woodbury.

On October 23, 2009, Attorney Mickelson-Dera sent a letter to the Respondent advising that pursuant to Practice Book §2-27(c), the Respondent's IOLTA account was going to be audited for the period of April 1, 2009 through September 30, 2009. Attorney Mickelson-Dera provided the Respondent with a list of documents for the audit period to be provided within ten days. The Respondent failed to provide the requested documentation within the ten day period. On November 10, 2009, Attorney Mickelson-Dera sent a second request for the documents to the Respondent. The Respondent failed to respond to Attorney Mickelson-Dera's letter. Thereafter, on November 19, 2009, the instant grievance complaint was filed against the Respondent for failure to comply with the audit.

On November 24, 2009, the grievance complaint was sent by certified mail to the Respondent at the address registered with the Statewide Grievance Committee. The Respondent was advised of his duty under Practice Book §2-32(a)(1) to submit a response to the grievance complaint within thirty days. The Respondent failed to respond to the grievance complaint. On December 28, 2009, grievance panel counsel sent a letter to the Respondent, requesting that the Respondent immediately file a response to the grievance complaint. On January 7, 2010, the Respondent filed a written response to the grievance complaint. The response did not include the documents requested pursuant to the audit.

This reviewing committee also considered the following:

In his written response to the grievance complaint, the Respondent maintained that he failed to comply with the audit because he was overwhelmed by the amount of documentation requested. The Respondent indicated that he is a solo practitioner and did not have any staff to assist him during that time because his paralegal/bookkeeper had retired. The Respondent further indicated that he was using his free time to assist his son in completing his college applications. The Respondent advised that he intended to assemble the materials within the next ten days and forward it to the panel. The Respondent failed to provide the audit

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documentation to the grievance panel prior to it issuing its probable cause determination on January 12, 2010.

This reviewing committee concludes by clear and convincing evidence that the Respondent violated Rule 8.1(2) of the Rules of Professional Conduct and Practice Book §2-32(a)(1). We cannot conclude, however, that the overdraft that occurred in the Respondent's IOLTA account violated Rule 1.15(b) of the Rules of Professional Conduct or Practice Book §2-27(a). The record reflects that the overdraft occurred as a result of a stop payment order placed on a bank check provided to the Respondent in connection with a closing. Furthermore, the overdraft concerned a check involved in the closing and was cured by the Respondent on the day it occurred. The record did not reflect that the Respondent failed to safeguard any clients' funds or use clients' funds for an unauthorized purpose.

This reviewing committee, however, finds that the Respondent engaged in ethical misconduct by failing to comply with Attorney Mickelson-Dera's audit request. Attorney Mickelson-Dera sent two letters to the Respondent requesting documents from the Respondent to conduct an audit. The Respondent failed to respond to either of these letters and never provided the requested documents. We find that the Respondent's failure to respond to Attorney Mickelson-Dera's audit requests constitutes a violation of Rule 8.1(2) of the Rules of Professional Conduct.

The Respondent also failed to timely file a response to the instant grievance complaint. The record reflects that the Respondent was sent a certified copy of the grievance complaint on November 24, 2009 and advised of his duty to respond within thirty days. The Respondent did not submit a written response until January 7, 2010, after being requested to do so by grievance panel counsel. The Respondent failed to show good cause for his failure to timely respond to the grievance complaint. Accordingly, we find that the Respondent's failure to timely respond to the grievance complaint constitutes a violation of Practice Book §2-32(a)(1).

This reviewing committee concludes that the Respondent's violation of Rule 8.1(2) of the Rules of Professional Conduct and Practice Book §2-32(a)(1) warrant a reprimand. Accordingly, we reprimand the Respondent.

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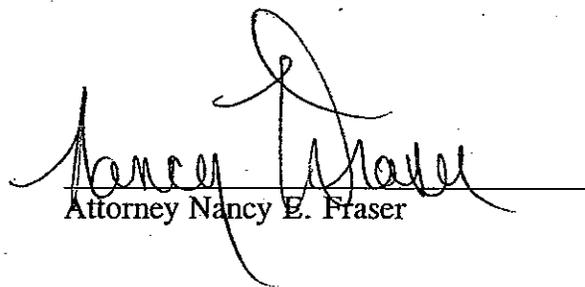


Attorney William J. O'Sullivan

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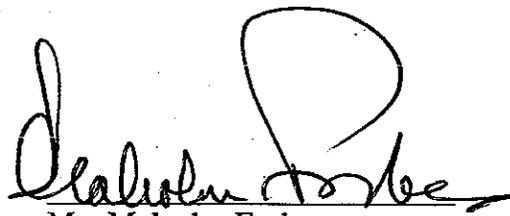


Attorney Nancy E. Fraser

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A handwritten signature in black ink, appearing to read "Malcolm Forbes". The signature is stylized with a large, looped initial "M" and a long, sweeping underline.

Mr. Malcolm Forbes