

STATE OF CONNECTICUT



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STATEWIDE GRIEVANCE COMMITTEE

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287 Main Street, East Hartford, Connecticut 06118-1885

06/27/2011

OFFICE OF CHIEF DISCIPLINARY C
100 WASHINGTON STREET
HARTFORD CT 06106

WILLIAM A FERNANDEZ
LAW OFFICE OF
WILLIAM A. FERNANDEZ
1795 5TH AVENUE
BAY SHORE NY 11706

RE: GRIEVANCE COMPLAINT #10-0745
PILLCO vs. FERNANDEZ

Dear Respondent and Disciplinary Counsel:

Enclosed herewith is the decision of the reviewing committee of the Statewide Grievance Committee concerning the above referenced matter. In accordance with the Practice Book Sections 2-35, 2-36 and 2-38(a), the Respondent may, within thirty (30) days of the date of this notice, submit to the Statewide Grievance Committee a request for review of the decision.

A request for review must be sent to the Statewide Grievance Committee at the address listed above.

Sincerely,

Michael P. Bowler

Encl.

cc: Attorney Gail S. Kotowski
LYNCH TRAUB KEEFE & ERRANTE PC
Betty M. Pillco

NOTICE REGARDING DECISION
SANCTIONS OR CONDITIONS

GRIEVANCE COMPLAINT # 10-0745

THE ATTACHED DECISION IS PRESENTLY STAYED IN ACCORDANCE WITH PRACTICE BOOK §§2-35 AND 2-38.

SECTION 2-35 STATES, IN PART, AS FOLLOWS:

(e) ... Enforcement of the final decision ... shall be stayed for thirty days from the date of the issuance to the parties of the final decision. In the event the respondent timely submits to the Statewide Grievance Committee a request for review of the final decision of the reviewing committee, such stay shall remain in full force and effect pursuant to Section 2-38(b).

SECTION 2-38 STATES, IN PART, AS FOLLOWS:

(b) ... Enforcement of a decision by a reviewing committee imposing sanctions or conditions against the respondent ... shall be stayed for thirty days from the issuance to the parties of the final decision of the reviewing committee pursuant to Section 2-35(g). If within that period the respondent files with the Statewide Grievance Committee a request for review of the reviewing committee's decision, the stay shall remain in effect for thirty days from the issuance by the Statewide Grievance Committee of its final decision pursuant to Section 2-36. If the respondent timely commences an appeal [of the sanctions or conditions to the Superior Court] pursuant to subsection (a) of this section, such stay shall remain in full force and effect until the conclusion of all proceedings, including all appeals, relating to the decision imposing sanctions or conditions against the respondent. If at the conclusion of all proceedings, the decision imposing sanctions or conditions against the respondent is rescinded, the complaint shall be deemed dismissed as of the date of the decision imposing sanctions or conditions against the respondent.

DECISION DATE: 0/27/11

STATEWIDE GRIEVANCE COMMITTEE

Betty Pillco
Complainant

vs.

William Fernandez
Respondent

:

:

:

Grievance Complaint #10-0745

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 June 1, 2011. The hearing addressed the record of the complaint filed on August 30, 2010, and the probable cause determination filed by the Litchfield Judicial District Grievance Panel, finding that there existed probable cause that the Respondent violated Rules 1.1, 1.3, and 8.4(4) of the Rules of Professional Conduct.

Notice of the June 1, 2011 hearing was mailed to the Complainant, to the Respondent and to the Office of the Chief Disciplinary Counsel on May 2, 2011. Pursuant to Practice Book §2-35(d), Assistant Disciplinary Counsel Suzanne Sutton pursued the matter before this reviewing committee. The Respondent was represented by Attorney Steven Errante. The Respondent appeared and testified. The Complainant did not appear. No exhibits were admitted into evidence.

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

On or about March 2, 2007, the Complainant was placed in removal proceedings. She hired the Respondent to represent her legal interests in the matter. A hearing was scheduled for July 1, 2008. The Respondent appeared at Immigration Court but the Complainant did not appear at court that day. The court did not hear the merits of the Complainant's defense to the removal because she did not appear in court; it ordered her removal.

On July 1, 2008, the Respondent called the office to ask whether the office had heard from the Complainant. By the end of the day, the office was able to contact the Complainant. She told the office staff that a medical emergency prevented her attendance. The staff member told the Respondent this information, but the removal had already been ordered.

The Complainant consulted with the Respondent on July 3, 2008. The Respondent agreed to prepare a Motion to Reopen based on the medical emergency in exchange for

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\$685. The Respondent could not prepare a successful Motion to Reopen without providing the court with evidence of the medical emergency and an affidavit. The Respondent did not prepare an affidavit or a Motion to Reopen for his client. The Respondent had no further direct contact with the Complainant. The Respondent made no attempts to contact the Complainant in writing and explain why the motion could not be filed. The Respondent made no written attempt to contact the Complainant and remind her of the deadline. The deadline to file a Motion to Reopen passed without the Respondent obtaining the supporting documentation and without the Respondent filing the Motion to Reopen. The Respondent made no effort to return the Complainant's retainer to her although the work was not performed.

The Complainant has hired subsequent counsel and has been able to reopen the removal proceedings.

The Respondent made a misrepresentation to the local grievance panel that he returned the Complainant's retainer to her. He told this reviewing committee at the hearing that he had not returned the retainer to the Complainant.

This reviewing committee also considered the following:

The Respondent has only been a lawyer for ten years but has been disciplined by the Statewide Grievance Committee on three prior occasions. Santiago v. Fernandez, Grievance Complaint #04-0226 (December 10, 2004) (Respondent ordered to pay restitution of \$910 and found to have violated Rules 1.3, 1.4, and 1.5(a) for keeping a fee on work he failed to perform); Pena v. Fernandez, Grievance Complaint #05-0077 (December 2, 2005) (Respondent reprimanded and ordered to attend six hours of continuing legal education in Professional Responsibility and found to have violated Rule 1.4 for failing to communicate in writing with the client as well as Practice Book §2-32(a)(1) for failure to answer the grievance complaint.); De Jesus Fuentes v. Fernandez, Grievance Complaint #09-1030 (January 7, 2011) (Respondent reprimanded and ordered to pay restitution of \$1000 and found to have violated Rules 1.5(b) and 8.4(3)).

The Complainant claimed in her grievance complaint that she gave copies of her medical records to the Respondent and contacted him every month regarding the status of her case. The Respondent disputed this claim at the hearing. The Complainant failed to attend the grievance hearing, and we could not find clear and convincing evidence that she provided these documents to the Respondent or that she communicated with the Respondent after July 3, 2008 and before August of 2010.

The Respondent testified that he was uncertain whether the Complainant would receive mail he sent to her and that he makes it a practice to not put legal information in

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writing to his clients because someone else may open the mail. The Respondent could not provide the committee with any evidence that he had mail sent to the Complainant returned to him.

This reviewing committee concludes, by clear and convincing evidence, the Respondent violated the Rules of Professional Conduct. We consider each Rule, for which probable cause was found, in turn.

Rule 1.1:

There is insufficient evidence that the Respondent was not competent in his representation. Because we could not find clear and convincing evidence that the Complainant provided the medical records and affidavit to support her claim to the Respondent, we cannot find it was incompetent for the Respondent to not file the Motion to Reopen. We accept his representation that this type of motion would be denied without evidence to support the facts alleged.

Rule 1.3:

There is clear and convincing evidence that the Respondent was not diligent in pursuing the Complainant's Motion to Reopen. The evidence shows that the Respondent made no effort to contact the Complainant in writing to obtain the evidence necessary to file the Motion to Reopen. The Respondent made no independent effort to obtain the necessary evidence for the Motion to Reopen. The Respondent made no effort in writing to inform the Complainant of the approaching deadline for the Motion to Reopen and no effort in writing to return the Complainant's retainer. This reviewing committee finds clear and convincing evidence that the Respondent was not diligent in pursuing the Complainant's Motion to Reopen.

Rule 8.4(4):

We do not find clear and convincing evidence that the Respondent's conduct was prejudicial to the administration of justice. The Respondent would have caused more harm to the Complainant's case if he had filed a Motion to Reopen that had no chance of success. We also considered the fact that the Complainant's case has been reopened.

In determining the appropriate level of discipline in this case, we considered the Respondent's extensive disciplinary history. There is a clear pattern of the Respondent failing to follow through on agreements with clients for legal work, failing to communicate with clients and keeping the client's entire retainer unless they complain to disciplinary authorities. In Pena v. Fernandez, Grievance Complaint #05-0077 (December 2, 2005) the

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Respondent was ordered to attend six hours of continuing legal education in Professional Responsibility. Our records indicate that the Respondent did not provide proof he had taken the course until after he was ordered presented by the Statewide Grievance Committee. We are also troubled by the Respondent's misrepresentation to the local grievance panel that he returned the Complainant's retainer to her. The Respondent has had plenty of time to institute proper law office management to prevent these types of situations. We would caution the Respondent that any further discipline no matter how minor is likely to result in a presentment to the Superior Court.

Accordingly, we conclude that the Respondent's violation of Rule 1.3 of the Rules of Professional Conduct, warrants a reprimand. This reviewing committee could not understand how an attorney would not make any efforts to contact his client in writing when he had no information to support the belief that she no longer lived at the address she provided. If the Respondent was concerned about the mail, he could have sent mail to the Complainant certified with a return receipt to ensure delivery.

In addition, we order the Respondent to pay the Complainant restitution in the amount of \$685. The Respondent is ordered to provide the Complainant with full restitution within thirty days of the date of this decision. The Respondent is further ordered to notify the Statewide Grievance Committee of his compliance with this condition within ten days of making restitution.

(D)
EMR

DECISION DATE: 6/27/11

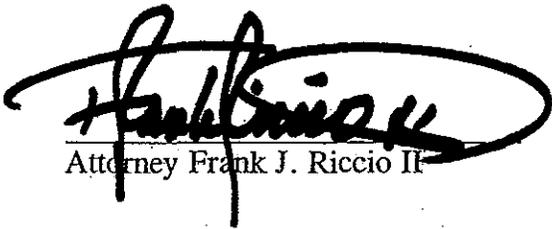
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Attorney Salvatore C. DePiano

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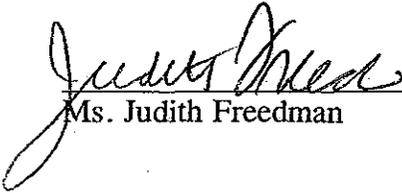


Attorney Frank J. Riccio II

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Ms. Judith Freedman