

STATE OF CONNECTICUT



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**STATEWIDE GRIEVANCE COMMITTEE**

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Second Floor - Suite Two  
287 Main Street, East Hartford, Connecticut 06118-1885

10/18/2011

OFFICE OF CHIEF DISCIPLINARY C  
100 WASHINGTON STREET  
HARTFORD CT 06106

ZENAS ZELOTES  
ZELOTES LAW OFFICES  
1224 MILL STREET, BLDG.2  
EAST BERLIN CT 06023

RE: GRIEVANCE COMPLAINT #10-1013  
ALIANO vs. ZELOTES

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,

A handwritten signature in cursive script that reads "Mr. P. Bowler".

Michael P. Bowler

Encl.

cc: Attorney Gregory A. Benoit  
Michael C. Aliano

**NOTICE REGARDING DECISION  
- PRESENTMENT -**

**GRIEVANCE COMPLAINT #** 10-1013

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

**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).**

**Note: This stay terminates upon the issuance of a final decision by the Statewide Grievance Committee.**

**DECISION DATE:** 10/18/11

STATEWIDE GRIEVANCE COMMITTEE

Michael C. Aliano  
Complainant

:

vs.

:

Grievance Complaint #10-1013

Zenas Zelotes  
Respondent

:

DECISION

Pursuant to Practice Book §2-35, the undersigned, duly-appointed reviewing committee of the Statewide Grievance Committee, conducted hearings at the Superior Court, One Court Street, Middletown, Connecticut on April 14, 2011 and May 12, 2011. The hearings addressed the record of the complaint filed on December 6, 2010, and the probable cause determination filed by the New London Judicial District Grievance Panel on February 4, 2011, finding that there existed probable cause that the Respondent violated Rules 1.7(a) (2), 4.2, 1.8(j), 8.1(1), 3.3(a) (1), 8.4(3) and 3.7(a) of the Rules of Professional Conduct.

Notices of the April 14, 2011 and May 12, 2011 hearing dates were mailed to the Complainant, to the Respondent and to the Office of the Chief Disciplinary Counsel on March 10, 2011 and April 14, 2011, respectively. Pursuant to Practice Book §2-35(d), Assistant Disciplinary Counsel Suzanne B. Sutton pursued the matter before this reviewing committee. The Complainant and the Respondent appeared at the hearings and testified. An exhibit was admitted into evidence.

Reviewing committee member Attorney Hugh W. Cuthbertson was not available for the hearing in this matter. Because the Disciplinary Counsel and the Respondent waived the participation of Attorney Cuthbertson, this decision is rendered by the undersigned.

At the outset of the hearing on April 14, 2011, the Respondent moved to strike various portions of the record, including a memorandum of decision on a motion to recuse in the Superior Court action of Terry Aliano v. Michael Aliano, Docket Number KNO-FA10-4113119S, as well as portions of transcripts therefrom. The reviewing committee ruled that they would not strike the memorandum of decision, but noted that the decision was not dispositive, given the different standard of proof. As to the transcripts, the reviewing committee ruled that it would only consider the portion involving the Respondent's testimony. Subsequently, during the course of the hearing date on May 12, 2011, the Respondent and Disciplinary Counsel stipulated that the reviewing committee could consider the testimony of the Complainant's ex-wife from the civil matter.

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

The Complainant and his then-wife, Terry Aliano, met the Respondent in a jazz club in New London on March 19, 2010. Terry Aliano had recently filed for divorce from the Complainant on March 3, 2010, but they were trying to reconcile. The Alianos became friends with the Respondent and initially they socialized with the Respondent and his girlfriend, Sharon, as couples. However, the friendship between Terry Aliano and the Respondent soon deepened, and they began to see each other separately. In June of 2010, the Respondent began to advise Terry Aliano about the divorce matter. Throughout the summer of 2010, their relationship intensified to the point where they would interact daily, spend evenings together, and they would hug, hold hands and kiss. Terry Aliano had difficulty obtaining funds to pay her then-current attorney, and on September 27, 2010, the Respondent filed his appearance in the divorce matter in lieu of Terry Aliano's prior attorney.

In the following months, numerous motions were filed in the divorce action. On December 14, 2010, the Complainant filed a motion to recuse the Respondent from representing Terry Aliano in the divorce action. After the issue was briefed and hearings were held, the Superior Court (Shluger, J) granted the motion and disqualified the Respondent from representing Terry Aliano by Memorandum of Decision dated January 24, 2011.

Throughout this period, the Complainant and Terry Aliano continued to reside in the marital home. On three separate occasions, the Complainant returned to the marital residence and found the Respondent there with Terry Aliano. On November 19, 2010, the Complainant returned from a trip and arrived at this house around 7:30 p.m. accompanied by his friends Mark and Nicole Greczkowski. He found the Respondent eating and drinking wine with Terry Aliano by candlelight and listening to music. The Complainant did not confront the Respondent, but went to see his son and stepdaughter, who were also in the house at the time. The Respondent and Terry Aliano thereafter began to play the game Scrabble while the Complainant interacted with the children.

On December 10, 2010, the Complainant returned home between 11:30 and 11:45 p.m. and found the Respondent and Terry Aliano again drinking wine and listening to music after having put the children to bed. When the Complainant got home, he confronted the Respondent, questioning whether it was appropriate for him to be there. The Respondent replied by stating that he could not communicate directly with the Complainant, and that the Complainant should contact his attorney. The Complainant demanded that the Respondent leave, but the Respondent did not. The Respondent took out of his bag a book of trial procedure and began to discuss with Terry Aliano how to prepare a trial notebook.

On December 24, 2010, after this grievance complaint and the motion to recuse had been filed, the Respondent was in the marital residence after a Christmas party when the Complainant

returned home around 11:00 p.m. The Complainant again confronted the Respondent. The Respondent remained in the home for some time thereafter before leaving.

This reviewing committee also considered the following:

The Complainant testified that he was told by Mark Greczkowski that during the encounter on November 19, 2010, Terry Aliano was caressing the Respondent's leg. The Complainant further testified that during the December 10, 2010 encounter, the Respondent was making intimidating statements to him, such as that the Respondent would "pierce the corporate veil," would "beat you up in court" and would "take your house." The Complainant was certain that the Respondent was engaging in a sexual relationship with Terry Aliano.

In his testimony before this reviewing committee, the Respondent stated that at first, he was not aware of the divorce proceeding, but sometime in the spring of 2010, he was informed by Sharon that the Alianos were having marital problems. The Respondent became "outraged" when he learned of certain alleged conduct by the Complainant. He determined that, while still socially engaged with the Complainant, "behind the scenes, I am encouraging Terry to aggressively move forward" with the litigation. He was going to do everything he could to make certain that Terry went ahead with her divorce. He was spending time with Terry Aliano to help her realize what it would be like to be out of her relationship with the Complainant, and to be in the "right type" of relationship. It soon became apparent to the Respondent that they had fallen in love.

The Respondent testified that, although his relationship with Terry Aliano was an "intimate" one, it did not involve sexual conduct. In her testimony in the civil action, Terry Aliano similarly denied that their relations were sexual, although she acknowledged as did the Respondent, that it involved hugging, holding hands and kissing.

The Respondent in his testimony before this reviewing committee sought to distinguish between his professional role as an attorney and his social relationship with Terry Aliano. He believed that the Rules of Professional Conduct had "no applicability whatsoever" to the incidents that occurred at the Aliano home. He believed he was in the Aliano home as a social friend, although he acknowledged that the case would be discussed at times, and that the attorney-client privilege would cover those conversations.

The Respondent denied making intimidating statements to the Complainant, stating rather that his discussions with Terry Aliano on December 10, 2010 were "neutral" and "generic" topics such as preparing a trial notebook, making an index, marking exhibits, and so forth, and were not specific to their case. He believed that the Complainant, who had sat down, kicked his feet up on the table, and was "staring us down," was behaving "obnoxiously."

When asked whether it was in his client's best interest to be present in the marital residence, the Respondent answered that "as her lover and as her friend, I don't think there's a consideration of best interest." He was there as her friend and date, and there was "total separation" between that and his role as her attorney. When asked whether his presence in the marital home late at night might have any kind of ramification for the divorce proceeding, the Respondent stated that "the cooling off period of the divorce had well passed. This is clearly an irretrievable breakdown. There's a very contentious case in terms of litigation." The Respondent declined to characterize the period of time when he was socializing with both the Complainant and Terry Aliano, as a couple, as a period of "reconciliation."

Regarding the incident on December 24, 2010, the Respondent believed that the Complainant was antagonistic, and he advised Terry Aliano not to communicate with the Complainant. He did not leave immediately thereafter, though, because he was there "as a social guest exclusively."

The Respondent testified that he has been paid \$10,000 in legal fees in the matter from the Complainant through a pendente lite court award, and that he has fees outstanding in the amount of \$15,000 to \$30,000. When he accepted the case, he informed Terry Aliano that he would look for pendente lite orders for his fees. He also testified that if he could not get payment through the court, he would consider a quid pro quo arrangement where Terry Aliano might do office work for him. When questioned as to whether such an arrangement would be problematic, the Respondent detailed his relationship with Sharon, his girlfriend in Pennsylvania. That relationship was sexual, and the Respondent subsequently appeared pro hac vice in Pennsylvania and took over her divorce case, which he litigated for over four years. He added that he has litigated that matter "brilliantly," noting that if "you aggravate a client, maybe you lose their business. You aggravate a sweetheart, you're sleeping on the couch." The Respondent explained that "when you are representing someone who you have love and affection for, you're going to work twice as hard and there's no question about it. It is not a detriment to the relationship. It's probably the best darn thing you can do. My advice to a woman going through a divorce is find a competent trial lawyer and make him your boyfriend."

The Respondent noted that he had been a necessary witness in Sharon's custody case. He testified in that matter, but continued to litigate the matter under the hardship exception to the disqualification rule. The Respondent maintained that he would not be a necessary witness in the Alianos' case.

The Respondent noted that when he took over Terry Aliano's case, he did not believe that prior counsel had been sufficiently aggressive and that the lawsuit needed immediate intervention. Accordingly, he filed numerous motions in that case after appearing.

In reaching its decision in this matter, the reviewing committee first considers the issue of whether the Respondent had sexual relations with Terry Aliano. Upon a review of the record, we

conclude that we are unable to find, by clear and convincing evidence, that the Respondent had sexual relations such that Rule 1.8(j) of the Rules of Professional Conduct was violated. We note that the only direct evidence we had in our record were the denials of such conduct by the Respondent and Terry Aliano. In so holding, we emphasize that the Superior Court, which reached a different conclusion in the memorandum of decision on the motion to recuse, had additional evidence to consider and, most importantly, was applying a lesser burden of proof than the standard in disciplinary matters. Accordingly, we are unable to find a violation of Rule 1.8(j) of the Rules of Professional Conduct and, concomitantly, must also dismiss as to the probable cause findings regarding Rules 8.1(1) and 3.3(a)(1) of the Rules of Professional Conduct, which were predicated upon the Respondent's answers and testimony on this subject.

Despite not finding sexual relations here, this reviewing committee finds, by clear and convincing evidence, that the Respondent engaged in unethical conduct. It is obvious to this reviewing committee that the Respondent's conduct in this matter involved a conflict of interest in violation of Rule 1.7(a)(2) of the Rules of Professional Conduct.

Rule 1.7(a)(2) states in pertinent part:

- (a) Except as provided in subsection (b), a lawyer shall not represent a client if the representation includes a concurrent conflict of interest. A concurrent conflict of interest exists if:
  - (2) there is a significant risk that the representation of one or more clients will be materially limited by ... a personal interest of the lawyer.

In this case, the "personal interest" of the Respondent is clear: his burgeoning romantic and intimate relationship with his client, Terry Aliano. Even accepting that the relationship predated the Respondent's appearance as counsel in the divorce action, and that the relationship never became sexual, as that term is understood for purposes of Rule 1.8(j), this relationship rendered the Respondent's representation inappropriate under the circumstances herein. The reviewing committee notes that even where no sexual relations are found, a conflicts analysis is appropriate. See, e.g., People v. Beecher, 224 P.3d 442 (Colo. O.P.D.J. 2009).

The purpose of Rule 1.7 is clearly to protect the client. As stated in the commentary: "Even where there is no direct adverseness, a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests." We emphasize that the Respondent was not representing Terry Aliano in a real estate transaction, a personal injury case, or a bankruptcy filing, but rather in her divorce. It is startling to this reviewing

committee that the Respondent does not appear to understand that his romantic interest in Terry Aliano would be a material limitation on his independent judgment and his legal advice to her regarding not just the litigation of her divorce action, but also issues concerning both her marital status and her position as a parent of minor children. If the litigation was "contentious," it was almost certainly due in part to the Respondent's own interest.

The conflict here was reflected in the three incidents at the marital residence on November 19, December 10 and December 24, 2010. The Respondent apparently believes that he could go from being merely a social guest one moment, then act as his client's lawyer in advising her not to communicate with the Complainant or discussing trial preparation, and then return to just being a friend, all within the space of a few minutes.

Similarly, the Respondent appears to have been entirely oblivious to the inherent fiduciary problem in such a relationship, where he became Terry Aliano's lawyer because, in essence, she did not have the funds to continue paying her prior lawyer. The Respondent even suggested that there might be a quid pro quo arrangement regarding legal fees.

Accordingly, the Respondent's role as a lawyer was dependent on maintaining the personal relationship. Indeed, the Respondent's proclaiming that he would "work twice as hard" for someone he "loves" carries with it two unstated, and far more negative, concerns: whether he would work less hard if his romantic interest in his client waned, and second, whether this put his client in the highly dependent position of needing to maintain their romantic relationship in order to maintain legal representation in the litigation.

The Respondent's lack of appreciation for the appropriate level of conflicts analysis that his situation required is made evidently clear by his startling suggestion that a divorcing woman should "find a competent litigator and make him your boyfriend." Needless to say, this reviewing committee disagrees with such advice. Under the facts and circumstances herein, the Respondent's representation of Terry Aliano was inappropriate and represented a conflict of interest in violation of Rule 1.7(a)(2) of the Rules of Professional Conduct.

Additionally, this reviewing committee finds the Respondent's actions in this matter, as set forth above, constitute conduct prejudicial to the administration of justice in violation of Rule 8.4(4) of the Rules of Professional Conduct. In particular, this reviewing committee was troubled by the three incidents on November 19, December 10 and December 24, 2010, where the Respondent appeared at the marital residence, demonstrated his obvious romantic interest in the wife of his party opponent, and even went so far as to take out law books and discuss trial preparation in front of the Complainant. While the reviewing committee accepts that this was generic enough not to constitute communication about the subject of representation and thus not in violation of Rule 4.2, it was certainly a needless, provocative and inflammatory action by the Respondent.

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Decision

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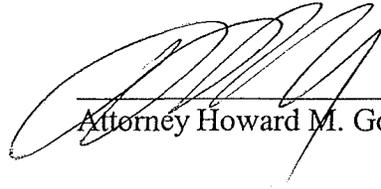
Finally, this reviewing committee is unable to conclude that the Respondent is a necessary witness in this matter, and accordingly finds no violation of Rule 3.7(a) of the Rules of Professional Conduct. The reviewing committee would note, however, that under different circumstances an analysis under this rule may be necessary, as the Respondent himself acknowledged that he was called as a witness in the Pennsylvania action.

Having found that the Respondent violated Rules 1.7(a)(2) and 8.4(4) of the Rules of Professional Conduct, and considering the serious nature of the violations as well as the Respondent's failure to recognize the inappropriate nature of his conduct in this matter, it is the order of this reviewing committee that the Disciplinary Counsel bring a presentment against the Respondent in the Superior Court for the imposition of whatever discipline is deemed appropriate.

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DECISION DATE: 10/18/11

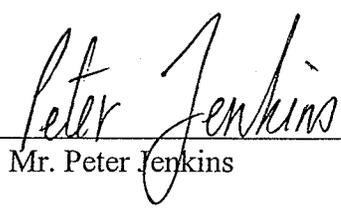
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Attorney Howard M. Gould

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Mr. Peter Jenkins