

STATEWIDE GRIEVANCE COMMITTEE

John C. Swanson, Jr.
Complainant

:

vs.

:

Grievance Complaint #07-0190

Jeffrey D. Cedarfield
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 October 10, 2007. The hearing addressed the record of the complaint filed on February 27, 2007, and the probable cause determination filed by the Hartford Judicial District Grievance Panel for Geographical Area 13 and the town of Hartford on June 7, 2007, finding that there existed probable cause that the Respondent violated Rules 4.4 and 8.4(4) of the Rules of Professional Conduct.

Notice of the hearing was mailed to the Complainant, to the Respondent, and to the Office of the Chief Disciplinary Counsel on August 31, 2007. Pursuant to Practice Book §2-35(d), Assistant Disciplinary Counsel Frank Blando pursued the matter before this reviewing committee. The Complainant and the Respondent appeared at the hearing and testified. An exhibit was admitted into evidence.

A third reviewing committee member was unavailable for the hearing. Disciplinary Counsel and the Respondent waived the participation of a third reviewing committee member in this matter. Accordingly, this matter was heard and decided by the undersigned.

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

The Complainant was an expert witness for the plaintiff in a civil litigation matter, Cruz v. Allstate Indemnity, HHD-CV-04-0832813. The Respondent, who was counsel for the defendant in the matter, noticed the Complainant's deposition in October of 2006. Both at the deposition and subsequently during the trial, the Respondent indicated to plaintiff's counsel that the Complainant's fees for the deposition would be paid. The plaintiff's counsel wrote to the Respondent in November of 2006, enclosing copies of the Complainant's invoices totaling \$921.44, but the Respondent did not respond. The plaintiff's counsel thereafter filed a Motion for Payment of Expert Witness Fees, dated December 5, 2006. On December 6, 2006, the plaintiff's counsel and the Respondent discussed the motion before the trial judge (Tanzer, J.), who was ruling on a motion to set aside the verdict. At that time, the Respondent raised oral objections to the motion

for fees, but he did not file a written objection, despite indicating to the court that he would do so.

The motion for fees subsequently appeared on the short calendar and was granted, “absent opposition,” by Judge Trial Referee Rittenband, on January 17, 2007. No payment having been made, plaintiff’s counsel filed a Motion for Order, dated February 5, 2007, seeking payment on or before a date certain. On February 16, 2007, the Respondent’s client tendered a check in the amount of \$350 to the Complainant. On February 20, 2007, the court (Miller, J.) granted the motion, ordering payment as per Judge Rittenband’s order, to be made on or before March 13, 2007. On March 2, 2007, the Respondent filed a Motion to Reconsider Judge Miller’s ruling. In April of 2007, compliance was ordered by Judge Graham, and the Respondent thereafter filed a motion to reconsider Judge Graham’s ruling. In May of 2007, the Complainant received the balance of the fees owed, after retaining his own attorney to pursue the matter.

This reviewing committee also considered the following:

The Respondent disputed the amount of the Complainant’s fees, asserting that there is a split of opinion as to whether a deponent’s travel time should be paid. In his answer, the Respondent disputed that he ever made an “unequivocal representation that the invoices would be paid in full.” He recalled that in response to inquiry on the subject by the plaintiff’s counsel his responses were “phrased so as to avoid a predictably protracted and unproductive discussion of the matter while not committing myself to payment as I am not the final arbiter of such issues.” At the hearing before this reviewing committee, the Respondent did not specifically recall what he told the plaintiff’s counsel at the deposition.

This reviewing committee concludes by clear and convincing evidence that the Respondent violated the Rules of Professional Conduct. The Respondent engaged in conduct that was both prejudicial to the administration of justice and had no substantial purpose other than to embarrass, delay or burden a third person, in violation of Rules 8.4(4) and 4.4(a), respectively, of the Rules of Professional Conduct. In this matter, it took three judicial orders to get the Complainant the fees that he was due. This was both unfair to the Complainant and a waste of judicial resources. The reviewing committee reminds the Respondent that the filing of a motion for reconsideration does not vitiate a court order. The reviewing committee is also concerned about the Respondent’s reply to the initial inquiry as to payment at the time of the deposition, which appears to have been, at best, disingenuous.

Having found the Respondent to be in violation of the Rules of Professional Conduct, this reviewing committee orders that the Respondent attend and complete, in-person and at his own expense, a continuing legal education (“CLE”) course within nine months of the date of this order. The CLE course is to be at least three credit hours, and should be in the area of motion practice or a similar topic, such as the CBA’s course entitled “Practice, Procedure, and Protocol in Connecticut Civil Courts,” given at the end of January, 2008. The Respondent is further ordered to provide certification in writing to the Statewide Grievance Committee of his completion of the

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course within thirty days of his compliance with this condition.

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DECISION DATE: 12/28/07

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Attorney Thomas Maxwell, Jr.

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Ms. Dahlia Johnston