

STATEWIDE GRIEVANCE COMMITTEE

Hector Torres :
Complainant :
vs. : Grievance Complaint #07-0955
Francis J. Ficarra :
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, One Court Street, Middletown, Connecticut on May 8, 2008. The hearing addressed the record of the complaint filed on September 28, 2007, and the probable cause determination rendered by the Fairfield Judicial District Grievance Panel ("Grievance Panel") on January 25, 2008, finding that there existed probable cause that the Respondent violated Rules 1.3, 1.15(e) and 8.1(2) of the Rules of Professional Conduct.

Notice of the May 8, 2008 hearing was mailed to the Complainant, to the Respondent and to the Office of the Chief Disciplinary Counsel on April 1, 2008. Pursuant to Practice Book §2-35(d), Chief Disciplinary Counsel Mark A. Dubois pursued the matter before this reviewing committee. The Complainant and the Respondent did not appear. No exhibits were admitted into evidence.

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

In 2000, the Complainant hired the Respondent to represent him in regard to a worker's compensation claim. The Respondent prepared a letter of protection for Advanced Back & Neck Center representing that the medical provider would be paid from any settlement proceeds he was able to collect. The Respondent settled the claim for the Complainant. The Respondent represented to the Complainant that all of his medical bills had been paid out of the settlement. The Advanced Back & Neck Center had not been paid out of the settlement and subsequently sued the Complainant to collect the funds.

On September 28, 2007, the Complainant filed a grievance complaint against the Respondent. A copy of the complaint was sent to the Respondent at his last registered address. The complaint was returned undeliverable to this office. The Respondent has not filed an answer to the complaint.

This reviewing committee also considered the following:

Disciplinary Counsel represented that he had been in touch with both the Respondent and the Respondent's counsel prior to the hearing.

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The Respondent is currently suspended from the practice of law until May 6, 2009. He must apply for reinstatement to the bar. Prior to his suspension, the Respondent had nine prior reprimands, was presented to the Superior Court in five grievance complaints, and agreed to consolidate sixteen additional grievance complaints in the Superior Court.

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

Rule 1.3:

The evidence shows that the Respondent offered the medical provider a letter of protection. The Respondent represented to the Complainant that the medical provider would be paid out of the proceeds of the settlement. The Respondent settled the case and failed to pay the medical provider or notify the Complainant that the medical provider had not been paid. The Complainant was sued by the medical provider for non-payment of the debt and a judgment was entered against him. For all the foregoing reasons, we find by clear and convincing evidence that the Respondent violated Rule 1.3 by failing to act with reasonable diligence and promptness in representing the Complainant.

Rule 1.15(e):

The evidence shows that the Respondent failed to provide the Complainant with a proper accounting of his settlement proceeds. The Complainant was under the mistaken impression that the Respondent had paid all of the medical bills prior to receiving the balance of his settlement. For all of the foregoing reasons, we find by clear and convincing evidence that the Respondent violated Rule 1.15(e)¹ by failing to provide the Complainant with an accounting of the settlement proceeds.

Rule 8.1(2) and Practice Book §2-32(a)(1)

The evidence shows that the Respondent failed to file an answer to the grievance complaint. The Respondent failed to appear or offer any explanation for why he did not respond to the grievance complaint. For all of the foregoing reasons, we find by clear and convincing evidence that the Respondent violated this Rule and Practice Book section.

¹ Rule 1.15 of the Rules of Professional Conduct was substantially amended on June 26, 2006 and the effective date of those changes was September 1, 2006. It is clear from the Grievance Panel's decision finding probable cause that they were referring to the current Rules of Professional Conduct in referencing the subsection. The exact same language was contained in Rule 1.15(b) at the time the Respondent represented the Complainant.

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Since we conclude that the Respondent violated Rules 1.3, 1.15(e), and 8.1(2) of the Rules of Professional Conduct and Practice Book §2-32(a)(1), we direct the Disciplinary Counsel to file a presentment against the Respondent in the Superior Court for the imposition of whatever discipline is deemed appropriate.

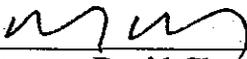
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DECISION DATE: 7/18/08

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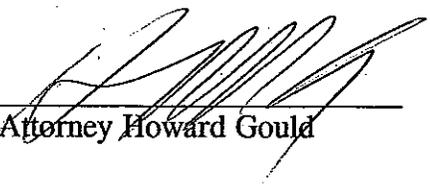
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Attorney David Channing

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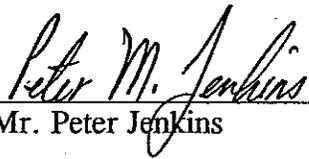


Attorney Howard Gould

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Mr. Peter Jenkins