

## STATEWIDE GRIEVANCE COMMITTEE

Grace Wright  
Complainant

:

vs.

:

Grievance Complaint #08-0154

Francis A. Minter  
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, 80 Washington Street, Hartford, Connecticut on August 7, 2008 and December 4, 2008. The August 7, 2008 hearing addressed the record of the complaint filed on February 15, 2008 and the probable cause determination rendered by the Judicial District of Hartford for Geographical Area 13 and the town of Hartford Grievance Panel on June 16, 2008, finding that there existed probable cause that the Respondent violated Rule 1.5 of the Rules of Professional Conduct. Notice of the August 7, 2008 hearing was mailed to the Complainant, to the Respondent and to the Office of the Chief Disciplinary Counsel on July 7, 2008. Pursuant to Practice Book §2-35(d), Assistant Disciplinary Counsel Suzanne B. Sutton pursued the matter before this reviewing committee. The Complainant did not appear at the hearing. The Respondent appeared at the hearing and testified. No exhibits were admitted into evidence.

On August 13, 2008, the undersigned reviewing committee issued a contemplated finding of probable cause. By letter dated August 20, 2008, the Respondent elected to be heard on the contemplated finding of probable cause by submitting a written response. On October 16, 2008, the reviewing committee of Attorney Dominic Rutigliano, Attorney Thomas Maxwell and Ms. Dahlia Johnston reviewed the record and determined that the record supported a finding of probable cause that the Respondent violated Rule 1.15 (b) and (e) of the Rules of Professional Conduct and Practice Book §2-27(a) and (b).

This reviewing committee conducted a hearing on December 4, 2008 to address the probable cause determination rendered by the reviewing committee of Attorney Rutigliano, Attorney Maxwell and Ms. Johnston. Notice of the December 4, 2008 hearing was mailed to the Complainant, to the Respondent and to the Office of the Chief Disciplinary Counsel on October 30, 2008. 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 hearing and testified. Six exhibits were admitted into evidence.

There was a vacancy in the lay-person member of this reviewing committee. Both the Disciplinary Counsel and the Respondent, however, waived the participation of a lay-person member in this matter and agreed to have the undersigned render this decision.

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

The Complainant retained the Respondent in December, 2001 to represent her in a civil case and signed a retainer agreement. The retainer agreement required a \$1500 retainer and provided that the retainer would be credited towards the one-third contingency fee charged by the Respondent upon successful resolution of the civil case. The Complainant wrote three checks to the Respondent's firm on retainer totaling \$1050: one in the amount of \$700 dated December 27, 2001; one in the amount of \$250 dated January 28, 2002; and one in the amount of \$200 dated May 6, 2002. All three checks were cashed by the Respondent. In the spring of 2005, the civil case was settled just before an arbitration was about to commence. Subsequently, the Complainant received her share of the settlement from the Respondent, but the settlement amount did not credit the \$1500 retainer fee as provided in the retainer agreement.

During 2007, the Complainant attempted to contact the Respondent by phone calls, emails and finally a letter to the Respondent dated December 27, 2007. The Complainant's messages were either not returned by the Respondent or were returned by a member of the Respondent's office staff. In answer to her inquiries, the Complainant was told that the Respondent had checked the calculations for the settlement figure and they were correct.

This reviewing committee also considered the following:

The Respondent's answer to the grievance complaint reiterated the response provided to the Complainant that the fee calculations for the Complainant's settlement were correct and that the matter was a fee dispute and not a matter for the grievance committee. At the August 7, 2008 hearing, the Respondent appeared and testified that he was unable to determine if the retainer was ever paid by the Complainant. The Complainant was not present at the August 7, 2008 hearing. The Respondent testified that he had not been able to find evidence of the retainer in his accounts and asserted that if the Complainant could produce a check with a bank account number he could better ascertain if the retainer had been paid.

At the December 4, 2008 hearing, the Complainant appeared and testified. The Complainant testified that although she paid the Respondent the entire \$1500 retainer required by the retainer agreement, she was only able to locate the three checks introduced as exhibits. The Complainant testified that just prior to accepting the settlement offered before the arbitration hearing, the Respondent reminded her that she would be refunded her retainer, which would result in additional money being added to the settlement figure. The Complainant testified that after receiving her share of the settlement money, she tried for over a year to get an explanation from the Respondent why the \$1500 retainer refund had not been sent to her. The Complainant also testified that during that one year period she did not receive a written statement from the Respondent accounting for fees, expenses or disbursements for her case.

At the December 4, 2008 hearing, the Respondent testified, after viewing the three checks introduced as exhibits that two of the checks were deposited into the operating account of the firm and were applied towards costs of the civil suit not the retainer. The Respondent testified that he could not ascertain whether the check in the amount of \$700 was applied towards the retainer, and he would need to research the check with his bank.

The Respondent has two prior reprimands in his grievance history.

This reviewing committee concludes by clear and convincing evidence that the Respondent violated the following Rules of Professional Conduct.

**Rule 1.15(b):**

Rule 1.15(b) of the Rules of Professional Conduct states, in part, "A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property....Funds shall be kept in a separate account...[c]omplete records of such account funds and other property shall be kept by the lawyer..."

**Practice Book § 2-27(a):**

Practice Book § 2-27(a) provides, in part, "Consistent with the requirement of Rule 1.15 of the Rules of Professional Conduct each lawyer or law firm shall maintain, separate from the lawyer's or the firm's personal funds, one or more accounts accurately reflecting the status of funds handled by the lawyer or firm..."

**Practice Book § 2-27(b):**

Practice Book § 2-27(b) provides, in part, "Each lawyer or law firm maintaining one or more trust accounts as defined in Section 2-28(b) shall keep records of the maintenance and disposition of all funds of clients...from the time of receipt to the time of final distribution." Practice Book § 2-27(b) lists under its five subsections, the types of records that should be maintained and they include, under subsection (1), a journal that identifies all deposits into the account.

In this case, we find by clear and convincing evidence that the Respondent failed to maintain accurate and complete records of the Complainant's funds in violation of Rule 1.15(b) and Practice Book §2-27(a) and (b). The Respondent acknowledged at the hearing that he had no record of the Complainant's retainer in his ledgers, yet the evidence presented at the hearing showed that the Complainant had in fact written checks to the Respondent which had been cashed by Respondent's firm. The Respondent failed to keep an accurate record that

identified the deposits made into the Complainant's account or a receipt of those payments and instead had to rely upon the checks presented at the hearing to determine that the checks had been cashed. Concerning the check for \$700, the Respondent testified that he could see that the check had been deposited by the firm, but he had no record of its deposit. The Respondent testified it appeared the Complainant had paid him something partly on account of the retainer.

**Rule 1.15(e):**

Rule 1.15(e) of the Rules of Professional Conduct states, in part, "...a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property."

In this case, we find by clear and convincing evidence that the Respondent failed to ascertain what funds the Complainant was entitled to receive from him when she inquired whether her retainer had been properly refunded and failed to provide the Complainant with an accounting of the status of her refund of the retainer when requested. The Respondent instead answered that his calculations were correct but provided no details or statements to the Complainant regarding those calculations. The Complainant attempted for a year to obtain that information from the Respondent. The Respondent maintained that his calculations were correct with the grievance panel during its investigation, and then at the grievance hearing asserted that he had no record of the retainer at all in his accounts. The Respondent's testimony at the hearing offered that it was the Complainant's responsibility to document the existence of the retainer for the Respondent by providing him with cancelled checks.

**Rule 1.5:**

Rule 1.5 of the Rules of Professional Conduct states, in part, "A lawyer shall not make an agreement for, charge, or collect an unreasonable fee."

This committee finds credible the testimony of the Complainant that she paid the entire \$1500 retainer but could only locate from her records the three checks introduced as evidence at the hearing. Accordingly, we find by clear and convincing evidence that the Respondent's failure to credit the \$1500 retainer paid by the Complainant against the one-third contingency fee charged in the civil case as provided in the terms of the retainer agreement violated Rule 1.5 of the Rules of Professional Conduct.

Since we conclude that the Respondent violated Rules 1.5, 1.15(b) and (e) of the Rules of Professional Conduct and Practice Book §2-27(a) and (b), 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. In making this decision, this reviewing

Grievance Complaint #08-0154

Decision

Page 5

committee considered the fact that the Respondent has two prior reprimands in his grievance history. This reviewing committee recommends that the Disciplinary Counsel seek an order of restitution to the Complainant of the \$1500 retainer which should have been refunded under the terms of the retainer agreement.

(E)

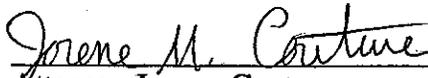
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Grievance Complaint #08-0154

Decision

Page 6

  
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Attorney Jorene Couture

Grievance Complaint #08-0154

Decision

Page 7



Attorney Shari Bornstein