

STATEWIDE GRIEVANCE COMMITTEE

Fairfield JD Grievance Panel
Complainant

vs.

John J. Evans
Respondent

Grievance Complaint #08-0208

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, 1 Court Street, Middletown, Connecticut on November 13, 2008. The hearing addressed the record of the complaint filed on March 6, 2008 and the probable cause determination filed by the Stamford/Norwalk Judicial District Grievance Panel on July 10, 2008, finding that there existed probable cause that the Respondent violated Rules 1.15(b) and 5.3(1) & (2) of the Rules of Professional Conduct and Practice Book §2-27(a).

Notice of the hearing was mailed to the Complainant, to the Respondent and to the Office of the Chief Disciplinary Counsel on September 23, 2008. Pursuant to Practice Book §2-35(d), First Assistant Disciplinary Counsel Patricia A. King pursued the matter before this reviewing committee. The Respondent appeared and testified before this reviewing committee. One exhibit was admitted into evidence.

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

In December of 2006, a personal injury matter involving the Respondent's client, Milena Cardona, settled for \$40,000. The Respondent maintains a Bank of America clients' funds trust account (hereinafter, "trust account"). On or about January 26, 2007, the Respondent disbursed to himself trust account check #3246 in the amount of \$5,200 as legal fees from the Cardona settlement. On or about February 5, 2007, the Respondent disbursed to himself trust account check #3248 in the amount of \$5,000 as legal fees from the Cardona settlement. On or about March 21, 2007, the Respondent disbursed to himself trust account check #3264 in the amount of \$3,657.83 as legal fees from the Cardona settlement. The Respondent's signature stamp was used on each check.

The Cardona settlement check dated February 19, 2007 in the amount of \$40,000 had not been received by the Respondent, at the time the Respondent disbursed legal fees to himself on or about January 26, 2007 and February 5, 2007. The Cardona settlement check was not deposited into the Respondent's trust account until February 23, 2007.

On February 5, 2007, the Respondent's trust account checks #3224 and #3241 in the amounts of \$1,979.19 and \$3,000 respectfully were presented for payment. At the time of presentation of the checks, there were insufficient funds in the trust account, which caused an overdraft on the account in the amount of \$4,731.99.

This reviewing committee also considered the following:

The Respondent contended that the overdrafts were caused by the fact that the settlement check from the Cardona matter had not been received and deposited at the time that he disbursed to himself fees totaling \$10,200 in the Cardona matter. The Respondent explained that as a result of a communication error with his assistant, he mistakenly thought that the Cardona settlement check had been deposited, at the time that he disbursed to himself fees totaling \$10,200. The Respondent further explained that he did not discover that the Cardona check had not been deposited, until he received notice from the bank of the overdrafts. The Respondent claimed that he permits his staff to use a signature stamp to sign checks from his trustee account, since he is out of the office approximately four days a week. The Respondent further claimed that his assistants are given "specific instructions on preparation of checks, and are instructed to use the signature stamp only" upon his specific advance approval.

This reviewing committee finds the following violations of the Rules of Professional Conduct and the Practice Book by clear and convincing evidence:

The Respondent failed to safeguard funds in his trust account in violation of Rule 1.15(b) of the Rules of Professional Conduct, by paying himself fees from his trust account totaling \$10,200 in the Cardona matter before the settlement check was deposited into his trust account. The Respondent improperly used funds of other clients to pay himself in the Cardona matter in violation of Practice Book §2-27(a). The Respondent failed to adequately maintain his trust account in a manner that accurately reflected the status of the funds in violation of Practice Book §2-27(a).

The record lacks clear and convincing evidence that the Respondent violated Rule 5.3 (1) and (2) of the Rules of Professional Conduct. This reviewing committee noted the Respondent's claim that his staff's use of his signature stamp was upon the Respondent's instruction and approval.

Since we conclude that the Respondent violated Rule 1.15(b) of the Rules of Professional Conduct and Practice Book § 2-27(a), we reprimand the Respondent.

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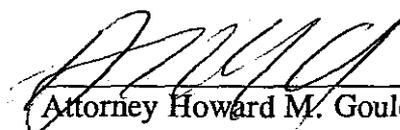
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Attorney Jorene M. Couture

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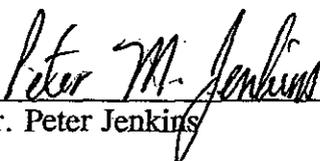


Attorney Howard M. Gould

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Mr. Peter Jenkins

**NOTICE REGARDING DECISION
- REPRIMAND -**

GRIEVANCE COMPLAINT # 08-0298

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 reprimanding 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 reprimand 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 reprimanding the respondent. If at the conclusion of all proceedings, the decision reprimanding the respondent is rescinded, the complaint shall be considered dismissed as of the date of the reprimand decision for all purposes....

DECISION DATE: 1/9/09