STATEWIDE GRIEVANCE COMMITTEE

Gerald Gale Complainant	:	
vs.	:	Grievance Complaint #08-0768
Francis A. Miniter 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, 80 Washington Street, Hartford, Connecticut on April 2, 2009. The hearing addressed the record of the complaint filed on August 19, 2008, and the probable cause determination rendered by the Hartford Judicial District Grievance Panel for Geographical Area 13 and the town of Hartford, finding that there existed probable cause that the Respondent violated Rule 8.4(4) of the Rules of Professional Conduct.

Notice of the April 2, 2009 hearing was mailed to the Complainant, to the Respondent and to the Office of the Chief Disciplinary Counsel on March 5, 2009. Pursuant to Practice Book §2-35(d), Assistant Disciplinary Counsel Suzanne B. Sutton pursued the matter before this reviewing committee. The Respondent appeared and though called as a witness, refused to testify citing his Fifth Amendment right against self-incrimination. One exhibit was admitted into evidence.

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

The Complainant filed a lawsuit on behalf of Sanders, Gale & Russell, a court reporting service, for payment on a transcript the Respondent ordered through his law firm. The court found judgment in favor of Sanders, Gale & Russell and ordered the Respondent to pay $577.72 in weekly installments of $35 commencing July 25, 2008. The Respondent failed to make the payments in accordance with the judgment and the Complainant filed a grievance complaint against the Respondent. As of March 23, 2009, the judgment had not been satisfied.

This reviewing committee also considered the following:

At the April 2, 2009 hearing, Assistant Disciplinary Counsel called the Respondent as a witness. The Respondent refused to testify because he claimed it violated his Fifth Amendment right against self-incrimination. The Respondent did not offer any case law to support his position. This committee rejected his argument and allowed Assistant

Disciplinary Counsel to call the Respondent. The Respondent claimed his Fifth Amendment privilege in response to every question Assistant Disciplinary Counsel asked.

The Respondent stated in his answer to the complaint that his client was responsible for paying the Complainant's bill and that the Respondent did not owe the Complainant the money ordered by the court in the judgment. There was no evidence to suggest that the Respondent attempted to pay any portion of the judgment or could not afford to pay the judgment. At the April 2, 2009 hearing, the Respondent chose not to offer any defense to the allegations against him after Disciplinary Counsel finished the case in chief.

The Respondent has received two prior reprimands from the Statewide Grievance Committee. The Respondent is currently the subject of a presentment.

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

We conclude that the Respondent violated Rule 8.4(4) of the Rules of Professional Conduct by failing to pay the civil judgment entered against him in favor of Sanders, Gale & Russell in accordance with the civil judgment. The law in Connecticut is well settled that an attorney's failure to pay a civil judgment constitutes conduct prejudicial to the administration of justice, in violation of Rule 8.4(4) of the Rules of Professional Conduct. The evidence shows that a judgment entered against the Respondent and said judgment has not been satisfied in accord with the court order; there is no evidence that the Respondent contested the judgment, made attempts to pay any portion of the judgment debt, or requested the payment schedule be modified.

Assistant Disciplinary Counsel asked this reviewing committee to take an adverse inference from Respondent's invocation of the Fifth Amendment privilege in response to the questions asked by Assistant Disciplinary Counsel. Since we determine that there is clear and convincing evidence that the Respondent violated a court order and thereby engaged in conduct prejudicial to the administration of justice, we do not need to reach the question of whether this reviewing committee can take an adverse inference from a witness' invocation of the Fifth Amendment privilege in grievance proceedings[1]. We decline to address this issue.

Since we conclude that the Respondent violated Rule 8.4(4) of the Rules of Professional Conduct, we direct the Disciplinary Counsel to file a presentment against the

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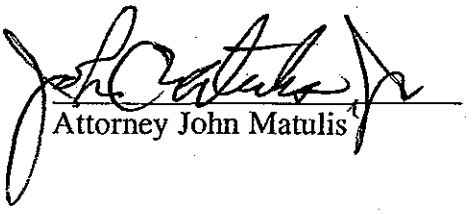
[1] "Ordinarily, constitutional issues are not considered unless absolutely necessary to the decision of a case." (citations and quotations omitted) Shelton v. Statewide Grievance Committee, 277 Conn. 99, 112 (2006).

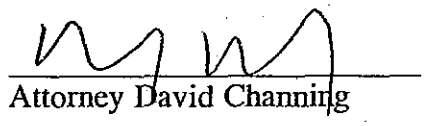
Respondent in the Superior Court for the imposition of whatever discipline is deemed appropriate.

(D)
EMR

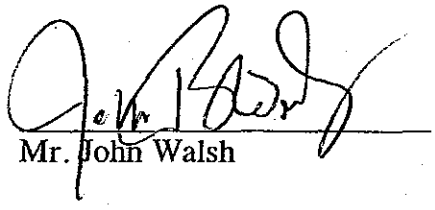
DECISION DATE: 7/21/09



Attorney John Matulis



Attorney David Channing



Mr. John Walsh