

STATEWIDE GRIEVANCE COMMITTEE

David Harduby :
Complainant

vs. : Grievance Complaint #09-0038

Jean Marie A. Riccio-Ryan :
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, 235 Church Street, New Haven, Connecticut on August 5, 2009. The hearing addressed the record of the complaint filed on January 20, 2009, and the probable cause determination filed by the Fairfield Judicial District Grievance Panel on June 11, 2009, finding that there existed probable cause that the Respondent violated Rules 1.1, 1.3, 1.4, 1.5, 1.16(d) and 8.4(3) of the Rules of Professional Conduct.

Notice of the hearing was mailed to the Complainant, to the Office of the Chief Disciplinary Counsel, and to the Respondent on July 14, 2009. Pursuant to Practice Book §2-35(d), Assistant Disciplinary Counsel Beth Baldwin pursued the matter before this reviewing committee. The Complainant and the Respondent appeared at the hearing and testified. The Respondent was represented by Attorney Patrice Cohan. Marshal T. Jerry Guliano testified as a witness. Two exhibits were admitted into evidence.

Reviewing committee member William Murphy was not available for the hearing. Since both Assistant Disciplinary Counsel and the Respondent waived the participation of Mr. Murphy, this decision was rendered by the undersigned.

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

The Complainant retained the Respondent in July of 2008. The Complainant was seeking to obtain custody and/or visitation rights so that he could continue to see the children of his former girlfriend. Although they were not his biological children, the Complainant had grown close to them during his relationship with their mother. The Respondent advised the Complainant that it would be a difficult case, but accepted the matter and received a \$3,500 retainer. Over the course of the next few months, the Complainant contacted the Respondent on numerous occasions to inquire about the status of the matter, but on only a few of those occasions did the Complainant receive any response.

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In September of 2008, the Respondent prepared a complaint and motions in the matter. However, the papers were never served. No further progress was made in the matter, and on January 8, 2009, the Respondent refunded to the Complainant \$1,400, the balance of the retainer.

This reviewing committee also considered the following:

The Respondent represented that she forwarded the complaint and motions that she had prepared to Marshal T. Jerry Juliano for service. Marshal Juliano testified at the hearing that his office had no record of having received them.

The Complainant testified that he repeatedly stressed to the Respondent that he wanted to proceed as quickly as possible in the matter, and that he provided to the Respondent an address for his former girlfriend, as well as times that she would be at that address, to facilitate service. The Complainant indicated that he was never informed by the Respondent that his case was a difficult one, but rather only that it might "drag on" for some time. The Respondent did not recall whether he requested a copy of his file when the representation terminated.

The Respondent testified that she had many communications with the Complainant in July of 2008, but that the level of communication broke down thereafter. She indicated that the Complainant appeared at her office unannounced on a number of occasions, and that he became increasingly agitated and angry. She testified that she sought to terminate the attorney-client relationship beginning in October of 2008, but did not memorialize this until her letter in January of 2009. The Respondent acknowledged that both her diligence and communication in the matter could have been better.

This reviewing committee concludes by clear and convincing evidence that the Respondent engaged in unethical conduct. The Respondent's failure to pursue the matter beyond the preparation of a complaint and motions reflects a clear lack of diligence in violation of Rule 1.3 of the Rules of Professional Conduct. The Respondent also clearly failed to maintain an adequate level of communication with the Complainant in violation of Rule 1.4 of the Rules of Professional Conduct by failing to respond in any way to many of the Complainant's contacts. While this reviewing committee understands that the Complainant's agitation and anger may have made him a difficult client, this does not relieve the Respondent of her obligations to communicate. If she wished to terminate the relationship prior to January, she should have memorialized this.

This reviewing committee does not find violations as to the other probable cause findings. The reviewing committee concurs with the position set forth by the Disciplinary Counsel at closing argument as to Rules 1.5, 1.16 and 8.1(2) of the Rules of Professional Conduct. As to the Respondent's potential misrepresentations as to whether she sent the

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papers to Marshal Juliano, this reviewing committee believes that the evidence submitted casts serious doubt on the truthfulness of the Respondent's representations in this regard, but is constrained by the clear and convincing evidence standard from finding a violation of Rule 8.4(3) of the Rules of Professional Conduct.

Since this reviewing committee has found that the Respondent violated Rules 1.3 and 1.4 of the Rules of Professional Conduct, it orders the Respondent to take, at her own expense, two continuing legal education ("CLE") courses; one in legal ethics and the other in law firm administration, solo practice, or a similar topic. The CLE courses are to be attended in person, unless the Respondent obtains pre-approval from the Statewide Grievance Committee to take the CLE courses electronically or through some other means. The CLE courses are to consist of a minimum of three credit hours each and are to be taken within twelve months of the issuance of this decision. The Respondent is further ordered to provide the Statewide Grievance Committee with written confirmation of her compliance with this condition within thirty days of completion of the CLE courses. The written confirmation should be in the form of a certificate of attendance or similar documentation from the course provider.

(8)

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A handwritten signature in black ink, appearing to read "Hugh Cuthbertson". The signature is written in a cursive style with a horizontal line underneath the name.

Attorney Hugh Cuthbertson

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Attorney Jorene Couture