STATEWIDE GRIEVANCE COMMITTEE

Trinene Davis
Complainant :

vs. : Grievance Complaint #09-0231

Francis 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, 235 Church Street, New Haven, Connecticut on November 4, 2009. The hearing addressed the record of the complaint filed on March 6, 2009, and the probable cause determination filed by the Hartford Judicial District Grievance Panel for Geographical Area 13 and the town of Hartford on July 10, 2009, finding that there existed probable cause that the Respondent violated Rules 1.1, 1.3, 1.4, 8.1 and 8.4(4) of the Rules of Professional Conduct and Practice Book §2-32.

Notice of the hearing was mailed to the Complainant, to the Respondent and to the Office of the Chief Disciplinary Counsel on October 5, 2009. Pursuant to Practice Book §2-35(d), Assistant Disciplinary Counsel Suzanne Sutton pursued the matter before this reviewing committee. The Complainant did not appear at the hearing. The Respondent appeared at the hearing and testified. One exhibit was admitted into evidence.

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

The Complainant retained the Respondent in February of 2004 to represent her in a workers' compensation matter. On December 5, 2006, the Workers' Compensation Commissioner issued his decision, dismissing the Complainant's claim. The Complainant had twenty days, until December 26, 2006, to file an appeal with the Workers' Compensation Review Board.

The U.S. Postal Service tracking records reflect that the December 5, 2006 decision was delivered to the Respondent on December 7, 2006 and signed for by "B. Gineyard," the security officer in the Respondent's office building. The Respondent filed the appeal with the Workers' Compensation Review Board on January 2, 2007. On September 17, 2008, the Workers' Compensation Review Board dismissed the appeal as being untimely filed. On October 2, 2008, the Respondent appealed the dismissal from the Workers' Compensation Review Board to the Appellate Court. Thereafter, on January 20, 2009, the Complainant filed a grievance complaint against the Respondent (#09-0040, Davis v. Miniter). On February 9,

2009, the Respondent filed a motion to withdraw his appearance of the Complainant in the Appellate Court matter because the Complainant had filed a grievance complaint against him. On April 13, 2009, the Respondent's motion to withdraw was granted.

On March 10, 2009, the instant grievance complaint was sent to the Respondent. The Respondent was advised of his duty pursuant to Practice Book §2-32 to respond to the grievance complaint within thirty days. The Respondent did not submit a response to the grievance complaint. Probable cause was issued by the grievance panel on June 23, 2009. The matter was thereafter scheduled for a hearing before this reviewing committee on September 2, 2009. On August 27, 2009, a letter was sent to the Respondent advising him that this reviewing committee had granted his motion for continuance of the hearing. The letter further stated, in bold type, that pursuant to Rule 8.1(2) of the Rules of Professional Conduct this reviewing committee was ordering the Respondent to submit a substantive answer to the grievance complaint. The Respondent did not file an answer as ordered by this reviewing committee.

This reviewing committee also considered the following:

The Respondent maintained that on December 15, 2006, the Complainant contacted him inquiring whether the Respondent had received the Workers' Compensation Commissioner's decision. The Respondent testified that he never received the decision signed for by the security guard on December 7, 2006. The Respondent maintained that neither he nor the Complainant had received the decision, so he contacted the Workers' Compensation Commission and was advised that the decision had been issued on December 5, 2006. The Respondent requested that the decision be faxed to his office. The Commission was unable to fax the decision, but indicated that they would resend the decision to the Respondent by regular mail. The Respondent testified that he believes he received the decision on December 22, 2006, the same day the Complainant received a copy of the decision. The Respondent advised that he was unable to determine exactly when the decision was received in his office, since he does not date stamp his mail. The Respondent maintained that he only worked a half day on December 22, 2006 and closed the office before the mail arrived in the afternoon. The Respondent testified that he did not return to work until January 2, 2007, at which time he met with the Complainant and filed the appeal. The Respondent acknowledged that his secretary was working in the office during the week he was on vacation.

The Complainant contended in her grievance complaint that the Respondent failed to communicate with her regarding the status of the workers' compensation case and failed to return her telephone calls. The Respondent testified that the Complainant would telephone his office every few days and that his secretary would refer the Complainant's calls to the Respondent if there were any new developments. If not, the Complainant would be advised that there were no new developments in her case. The Respondent testified that he spoke with the Complainant every other week. The Respondent maintained that he met with the

Complainant prior to depositions and court hearings. The Respondent further testified that he discussed the Workers' Compensation Commissioner's decision and the appeal process with the Complainant.

The Respondent acknowledged receiving a copy of the grievance complaint. The Respondent testified that he intended to respond to the complaint, but never did. The Respondent also acknowledged receiving a copy of the August 27, 2009 letter granting his motion for a continuance of the September 2, 2009 hearing. The Respondent maintained that he only read that portion of the letter indicating that his motion for continuance had been granted. The Respondent testified that he was busy filing briefs in a federal case and did not read that portion of the letter ordering him to submit a response to the grievance complaint.

This reviewing committee also considered the decision issued in connection with a prior grievance complaint filed by the Complainant against the Respondent (Grievance Complaint #09-0040, Davis v. Miniter). In that complaint, the reviewing committee ordered that the Respondent be presented for violating Rule 8.4(4) of the Rules of Professional Conduct for threatening to withdraw his representation of the Complainant in the workers' compensation case, if the Complainant did not withdraw the grievance complaint.

This reviewing committee also considered the Respondent's disciplinary history. The Respondent's disciplinary history reflects the following: a reprimand issued by the Statewide Grievance Committee on 6/23/06; a reprimand issued by the Statewide Grievance Committee on 9/8/06; a reprimand issued by the Statewide Grievance Committee on 2/15/07 (Respondent's appeal dismissed; appeal pending at Appellate Court); a reprimand issued by the Statewide Grievance Committee on 4/19/07 (Respondent's appeal dismissed; appeal pending at Appellate Court); a reprimand issued by the Statewide Grievance Committee on 4/17/08 (Respondent's appeal dismissed; appeal pending at Appellate Court); an order of presentment issued by the Statewide Grievance Committee on 4/16/09; an order of presentment issued by the Statewide Grievance Committee on 9/17/09; and an order of presentment issued by the Statewide Grievance Committee on 10/30/09.

This reviewing committee concludes by clear and convincing evidence that the Respondent engaged in unethical conduct. The record clearly indicates that the Respondent did not timely file the Complainant's appeal with the Workers' Compensation Review Board. The Workers' Compensation Commissioner's decision was issued on December 5, 2006, giving the Respondent until December 26, 2006 to file an appeal. Although it is unclear whether the Respondent received the decision signed for by the security guard on December 7, 2006, it is undisputed that on December 15, 2006, the Respondent learned that the decision had been issued on December 5, 2006. At that point, the Respondent knew that he had eleven days to file an appeal. Rather than going to the Workers' Compensation Commission office to pick up the decision, the Respondent had the decision re-sent to him by mail. He thereafter left his office for vacation on December 22, 2006 and failed to take any action to ensure that he timely

reviewed the decision to determine whether an appeal needed to be filed by December 26, 2006. This reviewing committee concludes that the Respondent did not act diligently in violation of Rule 1.3 of the Rules of Professional Conduct. We cannot conclude, however, that the Respondent's failure to timely file the appeal was due to a lack of competence in violation of Rule 1.1 of the Rules of Professional Conduct. We were also unable to conclude that the Respondent failed to adequately communicate with the Complainant during the course of the representation in violation of Rule 1.4 of the Rules of Professional Conduct.

With respect to the Rule 8.4(4) finding, this reviewing committee concludes that no further action is required since the Respondent has already been ordered presented on this conduct in connection with Grievance Complaint #09-0040, Davis v. Miniter.

Lastly, this reviewing committee concludes that the Respondent's failure to respond to the grievance complaint constitutes a violation of Rule 8.1(2) of the Rules of Professional Conduct and Practice Book §2-32(a)(1). The Respondent acknowledged receipt of the grievance complaint, but could not provide this reviewing committee with an explanation for his failure to respond to the grievance complaint.

In addition to the Rules cited by the grievance panel, this reviewing committee concludes by clear and convincing evidence that the Respondent also violated Rule 8.1(2) of the Rules of Professional Conduct by failing to submit a written response to the grievance complaint as ordered by this reviewing committee in its August 27, 2009 letter to the Respondent.

This reviewing committee concludes that the Respondent's violation of Rules 1.3 and 8.1(2) of the Rules of Professional Conduct and Practice Book §2-32(a)(1) warrant a presentment. Accordingly, we direct Disciplinary Counsel to file a presentment against the Respondent in the Superior Court for the imposition of whatever discipline the court may deem appropriate. Since the presentment will be a trial de novo, we further direct Disciplinary Counsel to include the additional violation of Rule 8.1(2) of the Rules of Professional Conduct found by this reviewing committee.

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DECISION DATE: 1/4/10

Attorney Hugh Cuthbertson

Jorene M. Couture
Attorney Jorene Couture

Mr. William Murphy