STATEWIDE GRIEVANCE COMMITTEE

Edward M. Gisselbrecht Complainant	:	
vs.	:	Grievance Complaint #09-0300
Zbigniew S. Rozbicki Respondent	:	
Christina M. Falzarano Complainant	:	
vs.	:	Grievance Complaint #09-0446
Zbigniew S. Rozbicki Respondent	:	

DECISION

Pursuant to Practice Book §2-35, the undersigned, duly-appointed reviewing committee of the Statewide Grievance Committee, conducted a consolidated hearing at the Superior Court, 80 Washington Street, Hartford, Connecticut on November 5, 2009, February 4, 2010 and May 6, 2010. The consolidated hearing addressed the records of two related complaints: Gisselbrecht v. Rozbicki, Grievance Complaint #09-0300, filed March 23, 2009 and Falzarano v. Rozbicki, Grievance Complaint #09-0446, filed May 6, 2009. In both grievance complaints, a probable cause determination was filed by the Litchfield Judicial District Grievance Panel. In Grievance Complaint #09-0300, probable cause was found on May 26, 2009 that the Respondent violated Rules 1.1, 1.3, 1.7(b) and 8.4(4) of the Rules of Professional Conduct. In Grievance Complaint #09-0446, probable cause was found on July 30, 2009 that the Respondent violated Rules 1.1, 1.3, 1.7(b) and 8.4(4) of the Rules of Professional Conduct.

Notices of the November 5, 2009, February 4, 2010 and May 6, 2010 hearing dates were mailed to the Complainants, to the Respondent and to the Office of the Chief Disciplinary Counsel on October 6, 2009, December 29, 2009 and April 8, 2010, respectively. Pursuant to Practice Book §2-35(d), Chief Disciplinary Counsel Mark Dubois pursued the matters before this reviewing committee. The Complainants and the Respondent appeared and testified. The reviewing committee also heard testimony from Attorney Deborah Truhowsky, Attorney J. Michael Sconyers and Eugene Gisselbrecht. Exhibits were admitted into evidence.

At the outset of the hearing date on November 5, 2009, the Respondent filed a Motion to Dismiss, a Motion to Limit Evidence, and a Motion for Inclusion of Evidence in each file. The Motion to Dismiss was predicated on the ground that a prior grievance complaint, arising out of the same underlying circumstances, Rozsas v. Rozbicki, Grievance Complaint #09-0083, was dismissed by decision dated September 4, 2009. This motion was taken under advisement at the time of hearing. Although this reviewing committee notes, infra, that the Rozsas decision has some preclusive affect on the current matters, the Motion to Dismiss is hereby denied. The Motion to Limit Evidence sought to limit certain evidence from the Probate Court. That motion was denied at the time of the hearing. In the Motion for Inclusion of Evidence, the Respondent sought for the reviewing committee to take judicial notice of certain testimony from the Rozsas hearing. That motion was granted at the time of the hearing. At the February 4, 2010 hearing date, the Respondent submitted a memorandum to which was attached exhibits, including excerpts of the testimony which were the subjects of his Motion for Inclusion of Evidence. Accordingly, that material became a part of the record.

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

The Respondent was the long-time employer of Kathleen M. Gisselbrecht, who died from cancer on April 17, 2007. In the year 2000, after Kathleen was diagnosed with cancer, she prepared a will, which was executed on November 3, 2000. The will appointed the Respondent as executor of Kathleen's estate. The Complainant Edward Gisselbrecht is the decedent's brother. The Complainant Christina Falzarano is the decedent's niece.

In the 1980s, Kathleen had built a home on Ridgebrook Road in Torrington, Connecticut. In doing so, Kathleen took out a mortgage and also obtained $20,000 from the Respondent to purchase the building lot. In January of 1989, Kathleen obtained a life insurance policy from Allstate Insurance in the amount $100,000. The named beneficiaries of the life insurance policy were the decedent's brother Edward Gisselbrecht and her twin sister, Ann Marie Rozsas.

In paragraphs three and four, the will stated as follows:

III.

> I hereby direct that the proceeds from my Allstate life insurance policy in the original face amount of $100,000 be used to pay the remaining balance owing on my mortgage at 40 Ridgebrook Road, Torrington, Connecticut. I further direct that the sum of $20,000 be paid from these proceeds, to ZBIGNIEW S. ROZBICKI, of Torrington, Connecticut, representing reimbursement for funds advanced to me for the purchase of said real estate.

IV.

> I bequeath and devise all the rest, residue and remainder of my personalty and realty, wherever situated and of whatever kind, as follows:
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> a) One-fifth to EDWARD M. GISSELBRECHT, JR.;
> b) One-fifth to RICHARD ALBRECHT and SALLY ALBRECHT, per stirpes;
> c) One-fifth to PHILIP FALZARANO and CHRISTINA FALZARANO, per stirpes;
> d) One-fifth to CHRISTOPHER ROZSAS;
> e) One-fifth to ROBERT URIAN and CLAUDIA URIAN, per stirpes.

On May 31, 2007, the Respondent was appointed as executor of Kathleen's estate and her will was admitted into probate. In June of 2007, Allstate forwarded to the Respondent the checks for the life insurance payments, made payable to Ann Marie Rozsas and Edward Gisselbrecht. The Respondent forwarded the checks to Ann Marie and Edward by cover letters dated June 26, 2007, both of which stated, in their entirety: "Enclosed please find the proceeds from Kathleen's life insurance along with a letter and questionnaire from Allstate. If you have any questions, please feel free to call." The Respondent put no conditions on the disbursement of the insurance proceeds.

In a letter dated August 30, 2007, the Respondent wrote to the residual beneficiaries, listed in paragraph four of the will, updating them as to the progress in the administration of Kathleen's estate and the status of the upcoming closing for the sale of Kathleen's home. In that letter, the Respondent stated that the "proceeds from the policy were paid to Edward and Ann Marie on the condition that the two obligations (mortgage and lot purchase) be paid off before the balance was divided."

In a letter dated September 5, 2007, Ann Marie Rozsas responded to the Respondent's August 30, 2007 letter, stating that she believed paragraph three of the will was no longer operative based on her conversation with Kathleen, and that the mortgage and the Respondent's $20,000 should be paid from the equity in the house. She indicated that she believed Kathleen had crossed out paragraphs two and three of the will, although the documents produced in this matter reflect only that paragraph two was crossed out by Kathleen. Documentation from the application for life insurance reflects that Ann Marie and Edward were listed as "First Class" beneficiaries and the Estate of Kathleen Gisselbrecht was listed as a "Second Class" beneficiary.

In October of 2007, the home was sold and the mortgage was paid from the proceeds of the sale. By letter dated November 26, 2007, the Respondent sent to all of the residuary beneficiaries a document entitled "Waiver, Agreement, and Acknowledgment" (hereinafter, "the Waiver") which stated that they consented to paying the mortgage and the $20,000 from the liquid assets of the estate and waived any claims for reimbursement of the life insurance proceeds. This document was signed by the parties over the course of a few weeks: the Albrechts, on November 30, 2007; Philip Falzarano on December 14, 2007; Christina Falzarano on November 29, 2007; Christopher Rozsas on December 13, 2007; and the Urians on November 27, 2007. However, the Respondent declined to proceed in accordance with the terms set forth in the Waiver, apparently based on the fact that he learned in December that Christina and Philip Falzarano recently had been divorced. In response to the Respondent's concerns, Christina Falzarano provided a Release signed by Philip Falzarano on December 31, 2007, granting his portion of the proceeds of the estate to Christina, as well as a copy of the Waiver signed by Philip.

On December 17, 2007, the Respondent paid himself the $20,000 from the funds of the estate. He did not return these funds to the estate for more than three months.

On January 21, 2008, the Respondent sent the residuary beneficiaries a letter indicating that a last bill had been paid, the documents executed by Philip had been received, and that he would "now proceed to finalize the remaining steps in Probate Court."

On February 29, 2008, the Respondent sent the residuary beneficiaries a copy of an "Application for Approval of Payments of Debts Due the Executor for Claims Against the Estate" dated February 22, 2008. Included in this application was the $20,000 payment due the Respondent, which he had already paid himself on December 17, 2007, and a claim for an attorney's fee from a personal injury claim, in which the Respondent had represented Kathleen, that was settled for $145,000 in November of 2006. The beneficiaries questioned this claim, as they had no previous knowledge of it, but the attorney's fee was subsequently accepted by the Probate Court.

In a letter to the beneficiaries dated March 6, 2008, the Respondent discussed the progress in settling the estate, noting that he was troubled by the fact that Christina Falzarano was attempting to sell or assign her portion of the inheritance to a funding company. He wrote that had Kathleen known that Christina would divorce Philip and "get herself into a financial jam and squander the funds intended for her children....she would have made Philip the sole beneficiary." The Respondent went on to defend his attorney's fee in the personal injury claim, suggesting that "all of you attempt to resolve the issues which this letter addresses and reach a consensus on your decision, hopefully to honor Kathleen's wishes, and not circumvent them."

In a letter to Christina Falzarano dated March 7, 2008, the Respondent refers to her as "a desperate woman" and reminds her that the "intent for Kathleen's bequest to you and Philip, was for the benefit of your children and not to plug up the holes jeopardizing your business adventures." In a letter to the beneficiaries dated March 17, 2008, the Respondent rejects a proposal from the beneficiaries regarding his fees, responds to issues as to personal items removed from the estate, and renews his demand for payment of the mortgage and the $20,000 from the insurance proceeds. His letter also includes the following statements:

> My impression is that none of you inquired or took the time to be concerned with Kathleen's affairs until it came time to claim your inheritance. It is also strange indeed that you have not asked me anything about Kathleen's affairs before you started making absurd statements.
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> * * *
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> The tone of your letter certainly addresses the subject of trust, a trust that you knew nothing about, until it came to claim your inheritance.

In a letter of the same date to Edward Gisselbrecht and Ann Marie Rozsas, the Respondent makes demands on them for return of the insurance proceeds, with interest. He notes that "the $20,000 debt ... is your obligation to me and not to the estate" and also demands interest on that. He goes on to add that the family's attitude is one of "patent denial" that the Respondent "may have been as important, or more important to her, than her family and certainly more attentive to her needs and general welfare."

In a letter to Christopher Rozsas dated March 27, 2008, the Respondent expressed his "tremendous disappointment that in the months prior to Kathleen's death ... for all practical purposes, her family ignored her in the most critical period of her remaining life."

In response to these developments, the beneficiaries retained counsel. Attorney J. Michael Sconyers filed an appearance on their behalf in the Probate Court. The Respondent wrote to Attorney Sconyers in a letter dated May 9, 2008, in which he wrote:

> Your client's ransacked the decedent's house, absconded with insurance proceeds intended by Kathleen to be applied to her debts and you are now dictating how I should administer my duties, not only as Kathleen's executor but also telling me, the only significant person in her life, what her intentions were?

In June of 2008, the Respondent filed a lawsuit against Ann Marie Rozsas and Edward Gisselbrecht, demanding return of the insurance proceeds under theories of breach of contract, unjust enrichment, conversion and breach of fiduciary duty. The lawsuit also sought punitive damages and injunctive relief. In a letter to Ann Marie Rozsas dated June 26, 2008, the

Respondent started out by noting that: "Kathleen left a legacy of love. Your family has responded to her memory with a legacy of greed." He also noted that: "By the looks of things, this is going to be a long voyage, leading nowhere, all at your family's misplaced invitation."

The Respondent prosecuted the lawsuit, vigorously responding to a motion for summary judgment filed by Attorney Sconyers on behalf of Ann Marie Rozsas and Edward Gisselbrecht, and seeking to depose them. By letter dated November 26, 2008, Attorney Sconyers proposed a settlement by which the Respondent would receive the personal injury fees and the $20,000, as well as a reasonable fee for the estate work. The Respondent rejected this, instead proposing in a letter dated December 24, 2008, that a settlement include the insurance policy proceeds being used to set up an education trust for children of the beneficiaries.

In February of 2009, the Respondent sought to obtain an affidavit from Philip Falzarano, by which he sought to establish that Philip had somehow been defrauded by Christina when she obtained his signatures on the Release and the Waiver without disclosing her intent to sell her inheritance to a funding company. Philip never signed the affidavit.

By order dated June 10, 2009, the Probate Court removed the Respondent as executor of the estate. The Probate Court found that the Respondent was wasting the estate by pursuing a civil action of "dubious merit and questionable benefit to the estate, particularly when a reasonable compromise has been offered, and that his removal best serves the interests of the beneficiaries due to [the Respondent's] unwillingness or persistent failure to administer the estate effectively, causing an unacceptable delay...." The order rejected the Respondent's argument that pursuing the insurance proceeds would enlarge the estate, noting the beneficiaries' willingness to surrender any claim to the proceeds. The Probate Court also rejected the Respondent's arguments as to Philip Falzarano having signed the Waiver and Release under false pretenses. The Probate Court wrote: "It is difficult for this court to understand for whose benefit the executor is fighting or how this fight is at all in the interest of the estate and the beneficiaries." The order went on to note that the Respondent's argument regarding Philip Falzarano and Christina Falzarano's assignment of her interest to a loan company was "not only unpersuasive, it is disingenuous." Finally, the Probate Court noted its reluctance to remove an executor, but stated that the "animosity felt by the executor toward the movants was palpable during the several hearings in this Court....This Court views the executor's arguments as reflecting a consistent pattern of litigiousness and obfuscation of issues solely designed to vex the movants and to delay the administration of this estate."

Shortly after the Respondent was removed as executor, the successor executor, Eugene Gisselbrecht, withdrew the lawsuit.

This reviewing committee also considered the following:

The Complainants alleged that the Respondent improperly removed items from Kathleen's home, including wildlife prints and a bronze statue of a cat. The Respondent argued that the prints were given to him and that he had previously given Kathleen money for the bronze statue, but had left it at her house for her to enjoy. The Respondent, in turn, accused the family members of taking items from the house shortly after Kathleen's death. Eugene Gisselbrecht testified that he brought some of the prints to the Respondent's office.

This reviewing committee concludes by clear and convincing evidence that the Respondent engaged in unethical conduct in this matter.

As an initial matter, this reviewing committee takes notice of the probable cause finding and decision on the Rozsas matter, Grievance Complaint #09-0083. In that matter, probable cause was found for a lack of competence, in violation of Rule 1.1 of the Rules of Professional Conduct, for the Respondent's determination that the insurance policy proceeds were part of the estate; and for the Respondent's failure to answer the grievance complaint, in violation of Rule 8.4(3) [sic] of the Rules of Professional Conduct and Practice Book §2-32(a)(1). The reviewing committee's decision was unable to find a violation of Rule 1.1 regarding competent representation, and found good cause for the Respondent's failure to timely answer. In light of that decision, this reviewing committee will not consider the probable cause findings in the current matters regarding potential violations of Rule 1.1 of the Rules of Professional Conduct. Additionally, given the conflicting testimony regarding the Respondent's taking of the prints and the bronze statue, this reviewing committee is unable to conclude that this aspect of the Respondent's conduct constituted a violation.

However, this reviewing committee believes that the Respondent clearly had a conflict of interest in these matters, in violation of Rule 1.7 of the Rules of Professional Conduct. In so finding, the reviewing committee notes that the Respondent was clearly acting in both a fiduciary capacity in his role as executor, as well as a legal capacity, in providing legal services to the estate. These legal services included preparing the Waiver and bringing the lawsuit. It is obvious to this reviewing committee that the Respondent's actions in this matter were materially limited by his personal interests in the matter. These personal interests included both his financial interests in seeking return of the $20,000 and the payment of the personal injury fee, as well as his personal feelings for the decedent and her family. Indeed, the record in this matter makes perfectly clear that the Respondent held Kathleen Gisselbrecht in the highest regard. Unfortunately, his warm feelings for Kathleen came to be matched by his disdain for her family over what the Respondent believed was their shoddy treatment of her. The record in this matter is replete with statements by the Respondent expressing his

hostility toward Kathleen's family.[1] Regardless of whether there was any merit to the Respondent's complaints about the family, it clearly became a situation where the Respondent's personal feelings, combined with his financial interest, should have caused him to withdraw from the matter. Instead, the Respondent engaged in a long series of actions seeking to vindicate his personal position, including lengthy litigation. There was clearly a concurrent conflict of interest under subsection (a) of Rule 1.7,[2] which was not allowable under any of the exceptions set forth in subsection (b) of that Rule. Subsection (b)(1) allows such a conflict "if the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client." Here the Respondent's representation was clearly not diligent. This reviewing committee concurs with the finding of the Probate Court that the Respondent was wasting the estate by engaging in "a consistent pattern of litigiousness and obfuscation of issues solely designed to vex the movants and to delay the administration of this estate."

Accordingly, the foregoing conduct by the Respondent constitutes a lack of diligence, in violation of Rule 1.3 of the Rules of Professional Conduct, as well as a conflict of interest, in violation of Rule 1.7 of the Rules of Professional Conduct. That same conduct, moreover, constitutes conduct prejudicial to the administration of justice, in violation of Rule 8.4(4) of the Rules of Professional Conduct. Given the clear violations set forth above, this reviewing committee directs the Disciplinary Counsel to bring a presentment against the Respondent in Superior Court, for the imposition of whatever discipline the court deems appropriate.

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DECISION DATE: 11/23/10

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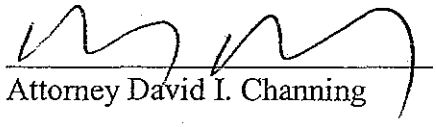
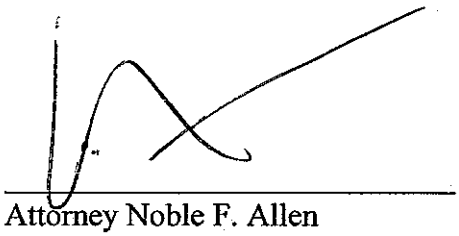
[1] This reviewing committee notes that the decision in Rozsas found the Respondent's statements to be unprofessional, but not unethical. This reviewing committee does not disagree that, in themselves, the statements are not unethical, but emphasizes these statements only to show the Respondent's antipathy toward the family as it pertains to his conflict of interest.

[2] The Grievance Panel's citation of subsection (b) of Rule 1.7 clearly subsumes that there was, in fact, a concurrent conflict under subsection (a), as subsection (b) begins with the language: "Notwithstanding the existence of a concurrent conflict of interest under subsection (a)...."



Attorney David I. Channing



Attorney Noble F. Allen

Mr. John B. Walsh