STATEWIDE GRIEVANCE COMMITTEE

Michael Bowler,
Statewide Bar Counsel
Complainant :

vs. : Grievance Complaint #09-0596

Theodore Poulos
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 December 2, 2009. The hearing addressed the record of the complaint filed on June 24, 2009 and the probable cause determination filed by the New Britain Judicial District and Judicial District of Hartford for G.A. #12 and the Towns of Avon, Bloomfield, Canton, Farmington and West Hartford Grievance Panel on September 1, 2009 finding that there existed probable cause that the Respondent violated Rule 1.15 of the Rules of Professional Conduct and Practice Book §2-27.

Notice of the hearing was mailed to the Complainant, to the Respondent and to the Office of the Chief Disciplinary Counsel on November 2, 2009. Pursuant to Practice Book §2-35(d), Assistant Disciplinary Counsel Suzanne Sutton pursued the matter before this reviewing committee. The Respondent appeared at the hearing and testified. No exhibits were admitted into evidence.

Reviewing committee member Attorney Hugh Cuthbertson was not available for the hearing in this matter. Since both Disciplinary Counsel and the Respondent waived the participation of Attorney Cuthbertson, this decision was rendered by the undersigned.

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

On or about March 12, 2009, three checks that the Respondent had written from his IOLTA account at Webster Bank were presented for payment against insufficient funds. The three checks were #8449 for $883, #8362 for $2,598.60 and #8275 for $86. On March 23, 2009, the Complainant wrote to the Respondent requesting a written explanation of the overdraft. On March 30, 2009 and April 18, 2009, the Respondent filed a written explanation of the overdraft with the Statewide Grievance Committee. On April 22, 2009, First Assistant Bar Counsel Frances Mickelson-Dera requested additional documentation in order to conduct an audit pursuant to Practice Book § 2-27(c). By letter dated May 1, 2009, the Respondent

requested an extension of time to submit the requested documentation because he was still working on completing an audit of his clients' funds account for the year 2008 in connection with a prior overdraft and needed more time to obtain the requested documentation.

On June 18, 2009, the Statewide Grievance Committee determined that the matter warranted further investigation which resulted in the filing of this grievance complaint on June 24, 2009. The Respondent filed an answer to the grievance complaint on July 25, 2009.

The reviewing committee also considered the following:

The Respondent appeared and testified at the hearing. The Respondent indicated that when the bank notified him of the overdraft in the IOLTA account on March 13, 2009, he immediately went to the bank and was informed that everything had cleared. The Respondent took that to mean that there was sufficient money in the account. After receiving notice of the overdraft from the Complainant, the Respondent deposited additional sums in the account on March 23, 2009, believing that would provide enough clearance in the account.

The Respondent admitted that he was supposed to have an accountant audit his client funds' account as part of a prior settlement with the Office of Chief Disciplinary Counsel in 2008 in connection with another overdraft, and he was supposed to institute improved IOLTA account management procedures. The audit was not complete because the accountant was waiting for certain documents which had not been prepared because the Respondent's part time bookkeeper had been out sick for some time. The Respondent admitted that with the bookkeeper unavailable, no periodic reconciliations were done on the IOLTA account. The Respondent indicated that he felt the problem with the account was complicated by that fact that money due the account was held in escrow by another attorney and delayed in a probate case. The Respondent admitted he did not perform periodic reconciliations on the account during the time the bookkeeper was sick, but instead believed that there was enough money in the account to avoid problems. The Respondent testified that for the past month, the bookkeeper had returned and was preparing the documents to supply to the accountant. The Respondent also maintained that he has improved his office accounting procedures since 2008 by keeping separate ledgers.

Disciplinary Counsel argued that the Respondent had not complied with the prior agreement to improve his accounting practices in regards to the maintenance of his IOLTA account and had not completed the audit for 2008. The instant overdraft occurred in March 2009 and nothing was done by the Respondent to address the problems with the account, or complete the agreed upon audit for 2008, until a month before the hearing. Disciplinary Counsel expressed reservations that the Respondent appreciated the gravity of the situation or that he would be able to comply with any new agreement to maintain the account properly. Since the 2008 audit was not completed by the Respondent, Disciplinary Counsel indicated that the Respondent probably needed to submit to mandated periodic audits overseen by a third

party.

This reviewing committee concludes by clear and convincing evidence that the Respondent engaged in unethical conduct. We find that the Respondent's IOLTA account did not accurately reflect the status of the funds in the account, resulting in an overdraft. We conclude that the Respondent's failure to accurately maintain his IOLTA account records and funds constitutes a violation of Rule 1.15(b) of the Rules of Professional Conduct and Practice Book §2-27(a).

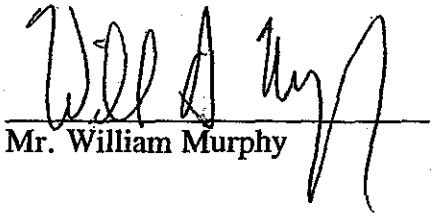
This reviewing committee concludes that the Respondent's violations of Rule 1.15(b) and Practice Book §2-27(a) warrant a presentment, especially in light of his prior history of overdrafts, his prior disciplinary history, and the Respondent's inability to comply with a prior agreement to improve his accounting system. The Respondent has not adequately addressed the problems with his accounting system for many months and requires more oversight in the form of periodic audits to ensure the Respondent's compliance.

In light of our findings that the Respondent's violations of Rule 1.15(b) and Practice Book §2-27(a) warrant a presentment, 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.

(E)

DECISION DATE: 1/29/10

Jorene M. Couture
Attorney Jorene Couture



Mr. William Murphy