

STATEWIDE GRIEVANCE COMMITTEE

Clifford Ferguson
Complainant

vs.

Joseph Moniz
Respondent

Grievance Complaint #09-0836

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 February 11, 2010. The hearing addressed the record of the complaint filed on September 23, 2009, and the probable cause determination filed by the Hartford Judicial District Grievance Panel for Geographical Area 13 and the town of Hartford on December 1, 2009, finding that there existed probable cause that the Respondent violated Rules 1.4, 1.5 and 8.1 of the Rules of Professional Conduct and Practice Book §2-32(a)(1).

Notice of the hearing was mailed to the Complainant, to the Respondent and to the Office of the Chief Disciplinary Counsel on December 30, 2009. Pursuant to Practice Book §2-35(d), Assistant Disciplinary Counsel Suzanne Sutton pursued the matter before this reviewing committee. The Complainant and the Respondent appeared and testified.

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

The Complainant retained the Respondent on March 8, 2006 to represent him and four other individuals in two related civil matters filed by the Second Baptist Church of New Britain. The defendants paid the Respondent a \$2,500 retainer. The Respondent did not provide the defendants with a written retainer agreement or any billing statements.

On April 24, 2006, the court granted the plaintiff's application for a temporary injunction in one of the cases. In the second case, the plaintiff sought a declaratory judgment that it was the record owner of the church. On July 19, 2006, default judgments were entered against the defendants for failure to appear. Thereafter, on September 5, 2006, the plaintiff filed a motion for judgment in the declaratory judgment file. On October 2, 2006, the court held a hearing on the motion. Neither the defendants nor the Respondent appeared at the hearing. Following the hearing, the court entered a declaratory judgment recognizing the plaintiff as the record owner of the church.

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On January 12, 2007, the Respondent filed a motion to set aside the default judgment. The Respondent did not request an evidentiary hearing on the motion. On January 30, 2007, the plaintiff filed an objection to the motion to set aside. Thereafter, the matter appeared on the short calendar for oral argument on May 21, 2007. The Respondent appeared at the hearing and filed an appearance on behalf of the defendants. The defendants did not appear at the hearing. At the hearing, the Respondent acknowledged that the defendants did not appear in connection with the declaratory judgment action due to the Respondent's failure to file an appearance on their behalf.

Following the hearing, the Respondent was given until July 5, 2007 to submit a memorandum in response to the plaintiff's post-hearing memorandum of law. The Respondent failed to do so. On July 24, 2007, the court denied the Respondent's motion to set aside the judgment stating that the Respondent's negligence was an insufficient basis to do so. The Respondent did not file an appeal. The Complainant learned of the dismissal of the case when he went to the courthouse to determine the status of the matter.

Although the defendants received notice of the court hearings, they did not appear because the Respondent advised them that their appearance was not required. The defendants met with the Respondent on approximately four occasions between 2006 and 2008. The Respondent never provided the defendants with any documents or court papers. Telephone calls to the Respondent's office were mostly answered by the Respondent's nephew who worked for the Respondent. When the Complainant did speak with the Respondent or his assistant, they were unable to provide the Complainant with any substantive information regarding the status of his case. The Respondent failed to appear at several meetings scheduled with the Complainant at the Respondent's office.

The Complainant subsequently filed this grievance complaint against the Respondent on September 23, 2009. On September 25, 2009, a copy of the grievance complaint was sent to the Respondent by certified mail at the last home and office address registered with the Statewide Grievance Committee. The Respondent was advised of his duty under Practice Book §2-32(a)(1) to respond to the grievance complaint within thirty days. The delivery receipts reflect that the Respondent signed for both letters on or about October 26, 2009. The Respondent did not file a written response to the grievance complaint as directed.

This reviewing committee also considered the following:

The Respondent acknowledged receipt of the grievance complaint. He testified that he did not respond to the complaint because his computer was not working and he was in the process of moving his office and unable to locate the Complainant's file. The Respondent stated that he believes he advised the Complainant of the default judgment and that he had filed a motion to set aside the judgment. The Respondent acknowledged, however, that he never provided the Complainant with copies of any court pleadings.

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This reviewing committee concludes by clear and convincing evidence that the Respondent engaged in unethical conduct. The record before this reviewing committee reflects that the Complainant had very little communication with the Respondent regarding the status of the case. Telephone calls to the Respondent's office regarding the status of the case were answered by the Respondent's assistant, who was unable to provide the Complainant with any information. Furthermore, the Respondent never provided the Complainant with any billing statements or court pleadings and did not require the Complainant to appear at any of the court proceedings. The Respondent also failed to advise the Complainant of the default judgment entered against the defendants and the subsequent motion to set aside the judgment filed by the Respondent. We conclude that the record supports a finding by clear and convincing evidence that the Respondent failed to keep the Complainant reasonably informed regarding the status of his case and failed to promptly comply with the Complainant's request for information in violation of Rule 1.4(a)(3) and (4) of the Rules of Professional Conduct.

This reviewing committee further concludes that the Respondent's failure to submit a written response 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). We find that the Respondent did not establish good cause for his failure to respond to the grievance complaint. The Respondent did not indicate how the lack of a computer or the relocation of his office prevented him from filing an answer to this grievance complaint. The Respondent could have requested additional time to respond and submitted a handwritten response 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 failed to provide the Complainant with a written retainer agreement in violation of Rule 1.5(b) of the Rules of Professional Conduct and failed to provide the Complainant with diligent representation in violation of Rule 1.3 of the Rules of Professional Conduct. The record clearly reflects that the Respondent failed to timely file an appearance on behalf of the Complainant and other defendants which resulted in a default judgment being entered against the defendants and an adverse ruling on the declaratory judgment. Furthermore, the Respondent did not request an evidentiary hearing on the motion to set aside the judgment. The Respondent also failed to file a response to the memorandum of law filed by the Complainant in connection with the motion to set aside the judgment and did not file an appeal when the motion was denied. We find that the Respondent's actions constitute a violation of Rule 1.3 of the Rules of Professional Conduct.

This reviewing committee concludes that the record did not support a finding by clear and convincing evidence that the Respondent's \$2,500 retainer fee was unreasonable in violation of Rule 1.5(a) of the Rules of Professional Conduct.

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This reviewing committee concludes that the Respondent's violation of Rules 1.4(a)(3) and (4) 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 violations of Rules 1.3 and 1.5(b) found by this reviewing committee.

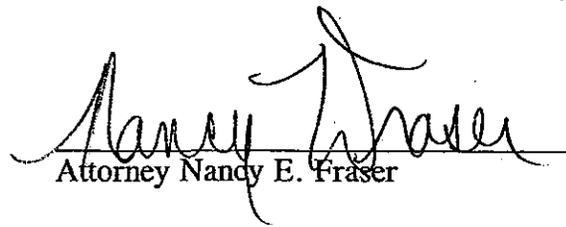
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DECISION DATE: 4/1/10

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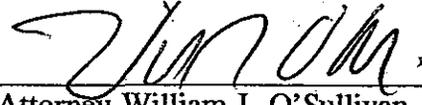


Attorney Nancy E. Fraser

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A handwritten signature in black ink, appearing to read "W. J. O'Sullivan", written over a horizontal line.

Attorney William J. O'Sullivan

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Mr. Malcolm Forbes