STATEWIDE GRIEVANCE COMMITTEE

Albert Evans
Complainant :

vs. : Grievance Complaint #10-0212

Richard S. Aries
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, 1061 Main Street, Bridgeport, Connecticut on July 7, 2010. The hearing addressed the record of the complaint filed on March 8, 2010, and the probable cause determination filed by the New Britain Judicial District and the Judicial District of Hartford for Geographical Area 12 and the towns of Avon, Bloomfield, Canton, Farmington and West Hartford Grievance Panel on May 4, 2010, finding that there existed probable cause that the Respondent violated Rules 1.3 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 June 8, 2010. 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. Reviewing committee member Judith Freedman was not available for the hearing. Both the Disciplinary Counsel and the Respondent, however, waived the participation of Ms. Freedman in this matter and agreed to have the undersigned render this decision.

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

In or about April of 2008, the Complainant retained the Respondent to represent him in a workers' compensation matter. The compensation carrier disputed the claim and refused to pay benefits to the Complainant. On April 10, 2008, the Respondent sent a letter to the compensation carrier advising them of his representation of the Complainant and requesting various records. Thereafter, on April 13, 2008, the Respondent sent a letter to the Complainant's doctor requesting a report. On April 22, 2008, the Respondent filed a request for an informal hearing with the workers' compensation commissioner. The compensation carrier, thereafter, provided the Complainant with benefits during the period of his total disability.

In July of 2009, the Respondent appeared with the Complainant at a workers' compensation hearing regarding a permanency rating for the Complainant's injury. At the hearing, the compensation carrier requested additional medical records regarding the Complainant's previous injuries. The compensation carrier disputed the five percent permanency rating in light of the Complainant's previous injury rating of fifteen percent. Following the hearing, the Complainant had no further meetings with the Respondent and no further hearings before the workers' compensation commission. In addition, the Complainant left numerous messages with the Respondent's office requesting the status of his case. The Respondent did not respond to these messages. The Complainant, thereafter, requested assistance from his union representative in contacting the Respondent. The union representative was unable to speak with the Respondent. The Complainant eventually sent a certified letter to the Respondent regarding his concerns and advising that he would file a grievance complaint against the Respondent if he did not respond. The Respondent did not respond to the Complainant's letter and the Complainant subsequently retained new counsel and requested his file from the Respondent. The Respondent provided the Complainant with his file at the July 7, 2010 grievance hearing.

On March 10, 2010, the instant grievance complaint was sent by certified mail to the Respondent at his 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 Respondent signed for the complaint on March 16, 2010, but failed to submit a response as directed.

At the July 7, 2010 hearing, the Respondent was advised of his failure to file an attorney registration form for 2010. The Respondent testified that he had recently received his password which would allow him to register electronically and that he would do so.

This reviewing committee also considered the following:

The Respondent testified at the hearing that he failed to respond to the Complainant's telephone calls and certified letter and failed to take any action in connection with the Complainant's case after the July, 2009 workers' compensation hearing. The Respondent advised this reviewing committee that his failure to act on the Complainant's case was because he has been suffering from depression. The Respondent further maintained that he did not respond to the grievance complaint due to his depression. The Respondent testified that he sought treatment and therapy, but discontinued the therapy. He is presently under the supervision of his general physician who has prescribed medication.

At the hearing, Disciplinary Counsel requested that this reviewing committee order a presentment, because she was seeking a disposition that this committee did not have the authority to impose. Disciplinary Counsel stated that she would request that the court place the Respondent on probation and have the Respondent contact Lawyers Concerned for Lawyers for assistance in

obtaining treatment and therapy for his depression. The Respondent stated that he was not opposed to the resolution that Disciplinary Counsel was seeking, but requested an opportunity to resolve the matter by agreement.

Following the hearing, this reviewing committee granted Disciplinary Counsel and the Respondent thirty days to try and resolve the matter by agreement. By letter dated August 17, 2010, the parties were granted an extension to September 10, 2010 to file an agreement. The Respondent was also advised that he had not electronically updated his attorney registration as represented at the July 7, 2010 hearing and that his password had been emailed to him a second time on August 12, 2010. On September 10, 2010, Disciplinary Counsel advised that the parties would not be submitting an agreement.

The Respondent's disciplinary history reflects two prior reprimands, one of which included a failure to respond to a grievance complaint. As of September 30, 2010, the Respondent had not filed an attorney registration for 2010.

This reviewing committee concludes by clear and convincing evidence that the Respondent engaged in unethical conduct. The Respondent acknowledged his failure to take any action in connection with the Complainant's case after the July, 2009 workers' compensation hearing and his failure to respond to the Complainant's telephone calls and letters regarding the status of his case. The Respondent's negligence and lack of communication with the Complainant resulted in the filing of this grievance complaint. We conclude that the Respondent violated Rule 1.3 of the Rules of Professional Conduct, by failing to pursue the Complainant's case after the July, 2009 hearing. The Respondent also acknowledged his failure to respond to the grievance complaint. This reviewing committee concludes that the Respondent's failure to respond to the grievance complaint constitutes a violation of Rule 8.1 of the Rules of Professional Conduct and Practice Book §2-2(a)(1).

In addition to the rules cited by the grievance panel, this reviewing committee concludes by clear and convincing evidence that the Respondent failed to file the 2010 annual attorney registration form with the Statewide Grievance Committee in violation of Practice Book §2-27(d). The Respondent was advised of his failure to register with the Statewide Grievance Committee at the July 7, 2010 hearing and testified to this reviewing committee that he would do so. Despite this assurance, the Respondent failed to file his attorney registration and was again requested to do so in an August 17, 2010 letter from Assistant Bar Counsel Cathy A. Dowd. Despite these requests and being sent his password a second time on August 12, 2010, the Respondent has failed to file his 2010 attorney registration form.

In determining the appropriate discipline to impose, this reviewing committee considered the Respondent's testimony that his violation of these rules was caused by his depression. We also took into consideration the position of Disciplinary Counsel that she was seeking a presentment in

order to pursue a disposition that would provide the Respondent with the assistance, oversight and treatment he requires in order to regulate his depression. Since these types of orders are not within our authority to impose and since the parties were unable to reach an agreement to resolve this matter, we conclude that a presentment is appropriate for the Respondent's violations of Rules 1.3 and 8.1 of the Rules of Professional Conduct and Practice Book §2-32(a)(1). 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. We recommend, however, that Disciplinary Counsel pursue the forms of discipline represented to this reviewing committee at the hearing. Since the presentment will be a trial de novo, we further direct Disciplinary Counsel to include the additional violation of Practice Book §2-27(d) found by this reviewing committee.

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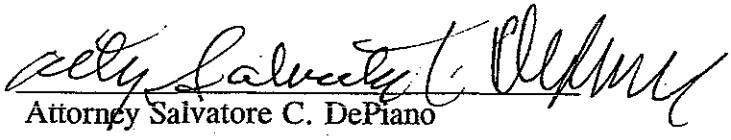
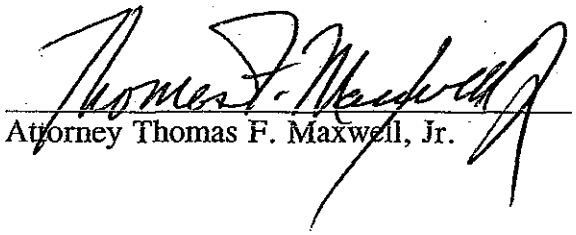
DECISION DATE: 10/29/10



Attorney Salvatore C. DePiano



Attorney Thomas F. Maxwell, Jr.