

STATEWIDE GRIEVANCE COMMITTEE

Hartford Judicial District Grievance Panel
for G.A. 13 and the town of Hartford :
Complainant

vs. : Grievance Complaint #08-1099

Dwight Owen Schweitzer :
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, 80 Washington Street, Hartford, Connecticut on March 12, 2009. The hearing addressed the record of the complaint filed on November 12, 2008, and the probable cause determination rendered by the Windham Judicial District Grievance Panel, finding that there existed probable cause that the Respondent violated Rules 7.5(a), 5.5(a), 3.5(2), 3.3(a) and (d) of the Rules of Professional Conduct.

Notice of the March 12, 2009 hearing was mailed to the Complainant, to the Respondent and to the Office of the Chief Disciplinary Counsel on February 3, 2009. Pursuant to Practice Book §3-14 et seq., certified legal intern Erika Maki of the Yale Law School Lawyering Ethics Project assisted in the presentation of this matter under the supervision of Assistant Disciplinary Counsel Beth L. Baldwin. The Respondent did not appear. No exhibits were admitted into evidence.

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

In July of 2008, the Respondent was representing himself in litigation in Florida.

On or about July 1, 2008, the Respondent sent correspondence via facsimile to the chambers of the Honorable Sarah Zabel of the 11th Judicial Circuit of the State of Florida requesting that the dismissal of his case be reopened sua sponte or a hearing be noticed on a motion to set aside the dismissal. The judge had made a ruling on the case that morning. The Respondent did not send, contemporaneously, a copy of the correspondence to opposing counsel. On the correspondence, the Respondent indicated that he was an "Attorney and Counselor at Law[,] licensed solely in the state of Connecticut." The Respondent was suspended from the practice of law on August 21, 2003, and his license has been inactive since that time. The Respondent did not indicate to the judge that his license in Connecticut has been suspended.

In response to an initial investigation by the Complainant, the Respondent wrote:

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The purpose of identifying my licensure in correspondence to a judge in a case where I am suing the very same attorney Hunter for malpractice and willful misconduct was to let the court know that I was not the typical pro se litigant and felt it completely appropriate to indicate my being licensed with all that it implies.

This reviewing committee concludes, by clear and convincing evidence, the Respondent violated the Rules of Professional Conduct. We consider each Rule, for which probable cause was found, in turn.

Rule 7.5(a):

Rule 7.5(a) of the Rules of Professional Conduct states: “[a] lawyer shall not use...letterhead...that violates Rule 7.1”. Rule 7.1 states “A lawyer shall not make a false or misleading communication about the lawyer or the lawyer’s services. A communication is false or misleading if it...omits a fact necessary to make the statement considered as a whole not materially misleading.” In this case, the Respondent submitted letterhead to the judge, which identified the Respondent as an attorney and counselor at law, licensed solely in the state of Connecticut. The Respondent omitted the fact that his license has been suspended since 2003. We find the fact that the Respondent’s license was suspended to be a fact necessary to make the statement that the Respondent had a Connecticut license not materially misleading. The omission of said fact was materially misleading in violation of Rule 7.1.

For all the foregoing reasons, we find by clear and convincing evidence that the Respondent violated Rule 7.5(a) by indicating on stationery that he was an attorney licensed to practice law in the state of Connecticut despite the fact that his license has been suspended.

Rule 5.5(a):

Rule 5.5(a) of the Rules of Professional Conduct states: “[a] lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction...” The underlying proceedings occurred in Florida. The Respondent was not representing another party in the proceeding. The Respondent’s conduct did not occur in Connecticut.

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Under these circumstances, there is insufficient evidence to determine that the Respondent's conduct violated the regulations of the legal profession in Florida or rose to the level of a Rule 5.5(a) violation.

Rule 3.5(2):

Rule 3.5(2) of the Rules of Professional Conduct prohibits a lawyer from communicating ex parte with a judge during the proceeding unless authorized to do so by law or court order. In this case, the Respondent sent correspondence regarding a pending case to the chambers of the judge presiding over the matter without sending a copy to opposing counsel.

For all the foregoing reasons, we find by clear and convincing evidence that the Respondent violated Rule 3.5(2) by communicating ex parte with a judge regarding pending litigation.

Rule 3.3(a):

Rule 3.3(a) of the Rules of Professional Conduct prohibits a lawyer from presenting false facts, law or evidence to the tribunal. It is not clear from the Grievance Panel's decision how the Respondent's conduct violated Rule 3.3(a). As noted above, we find the failure to indicate that the Respondent's license was suspended was misleading. This reviewing committee cannot conclude that the reference to the Respondent's license was a false statement of material fact in the underlying case.

This reviewing committee concludes that the record does not substantiate a finding by clear and convincing evidence that the Respondent violated Rule 3.3(a) of the Rules of Professional Conduct.

Rule 3.3(d):

Rule 3.3(d) states: "In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse." In this case, the Respondent informed the tribunal that he was licensed to practice law in Connecticut because, he wanted "to let the court know that I was not the typical pro se litigant and felt it completely appropriate to indicate my being licensed with all that it implies." Since the Respondent used his license to lend credibility to his request to set aside the dismissal, it was necessary, in an ex parte communication, for the Respondent to reveal the adverse fact that his license to practice law had been suspended.

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For all the foregoing reasons, we find by clear and convincing evidence that the Respondent violated Rule 3.3(d) by failing to inform the tribunal that his license to practice law had been suspended.

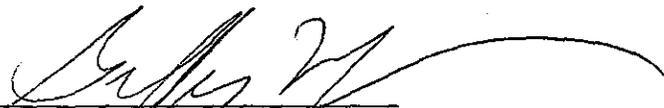
Since we conclude that the Respondent violated Rules 7.5(a), 3.5(2) and 3.3(d) of the Rules of Professional Conduct, we reprimand the Respondent.

(D)
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DECISION DATE: _____

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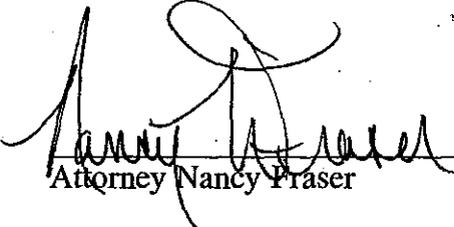


Attorney Geoffrey Naab

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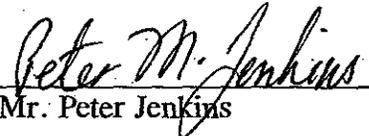
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Attorney Nancy Fraser

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Mr. Peter Jenkins