

STATEWIDE GRIEVANCE COMMITTEE

Litchfield Judicial District Grievance Panel :

Complainant

vs.

:

Grievance Complaint #08-0767

Ira Mayo

:

Respondent

DECISION

Pursuant to Practice Book §2-35, the undersigned, duly-appointed reviewing committee of the Statewide Grievance Committee, conducted hearings at the Superior Court, 80 Washington Street, Hartford, Connecticut on April 2, 2009 and June 4, 2009. The hearing addressed the record of the complaint filed on August 19, 2008, and the probable cause determination rendered by the New Haven Judicial District Grievance Panel for the towns of Bethany, New Haven and Woodbridge ("Grievance Panel") on December 10, 2008, finding that there existed probable cause that the Respondent violated Rules 8.4(1), (2), and (4) of the Rules of Professional Conduct.

Notice of the April 2, 2009 and June 4, 2009 hearings were mailed to the Complainant, to the Respondent and to the Office of the Chief Disciplinary Counsel on March 5, 2009 and May 1, 2009 respectively. Mr. John Walsh attended the April 2, 2009, hearing, but was not available for the June 4, 2009 hearing. He reviewed the entire transcript of that hearing prior to participating in the decision.

Pursuant to Practice Book §2-35(d), Chief Disciplinary Counsel Mark Dubois pursued the matter before this reviewing committee. The Respondent, represented by Michael Fasano of Duffy & Fasano, appeared and testified. The reviewing committee also heard testimony from Rosemary Shadrick, Robert Prue, Michelle Roche, Christina Melfi, Diane Polan, and Robert Ugliarolo. Seven exhibits were admitted into evidence.

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

This complaint was initiated by a letter Attorney Diane Polan sent to the Office of Statewide Bar Counsel alleging the Respondent had made inappropriate sexual advances on her client, Rosemary Shadrick in connection with his representation of Ms. Shadrick in a criminal proceeding.

In September of 2007, Ms. Shadrick met with the Respondent at his office. Ms. Shadrick needed legal representation in a criminal matter that also involved allegations of domestic violence. She hired the Respondent to represent her in the criminal case in Bantam. The criminal matter involved a dispute among Ms. Shadrick, Ms. Shadrick's ex-boyfriend and his new girlfriend. Ms. Shadrick signed a retainer agreement but did not

provide the Respondent with the \$1,500.00 retainer requested. The retainer agreement noted that the representation was for a criminal matter involving "domestic violence." In October, Ms. Shadrick was arrested on a different charge and the Respondent agreed to represent her in the second matter. This matter involved similar domestic issues. The Respondent did not request or receive any retainer, nor did he provide Ms. Shadrick with a new retainer agreement. The Respondent believed that Ms. Shadrick would be eligible for a diversionary program through Family Relations. The attorney client relationship broke down because the Respondent would not represent Ms. Shadrick regarding a protective order and Ms. Shadrick believed that the Respondent was making inappropriate sexual advances towards her. She called the Respondent on his cell phone and left a voicemail asking when she could come in to obtain copies from her file and a tape. The Respondent sent her a text message telling her to come to the office on November 19, 2007 between 3:00 and 3:45 p.m.

Ms. Shadrick came to the Respondent's office at about 3:00 p.m. on November 19, 2007. The Respondent was with a client. After speaking with Michelle Roche and waiting, Ms. Shadrick eventually saw the Respondent. Ms. Roche made copies for Ms. Shadrick. The Respondent represented her in court the next day. Ms. Shadrick told her friend, Officer Ugliaroli, that she believed the Respondent was making inappropriate sexual advances towards her and expected her to sleep with him in order to continue as her attorney. Officer Ugliaroli advised her to obtain new counsel and took her to see Attorney Diane Polan. Attorney Diane Polan and another attorney successfully represented Ms. Shadrick in her criminal matter and she received accelerated rehabilitation. When Ms. Shadrick first met with Attorney Polan, she spent approximately thirty minutes explaining why Respondent's conduct had made her uncomfortable and asserting the same allegations she had made to her sister, father and Officer Ugliaroli.

Despite the legal work that the Respondent did for Ms. Shadrick, he never attempted to collect any legal fee from her.

This reviewing committee also considered the following:

The Respondent was suspended from the practice of law on September 30, 2005 for fifteen months after being presented to the court for three grievance complaints involving allegations of sexual misconduct on the part of the Respondent. As part of his reinstatement to the bar on January 3, 2007, the Court (Holzberg, J.) placed the following relevant conditions on the Respondent:

- a. Respondent will maintain procedures in his law office to prevent his being alone, or in confined quarters, with women at any time, and such procedures shall be sufficient to protect the attorney/client privilege;

- b. Respondent will continue to cooperate with medical and/or health professional(s) and will comply with all requests and requirements of the treatment program;
- c. Respondent will direct his practice away from the representation of women in domestic relations matters;  
\* \* \*
- f. During this period of supervised practice [two years], Respondent will not violate any of the Rules of Professional Conduct and will abide by the terms of this order.

The Respondent testified that he has set in place office procedures to avoid the representation of women in domestic and family cases and to avoid meeting female clients alone.

There was conflicting evidence as to whether or not the Respondent made sexual advances on the Complainant and whether he ever physically touched her in an inappropriate way.

This reviewing committee concludes by clear and convincing evidence that the Respondent violated the Rules of Professional Conduct.

Rule 8.4(1):

Rule 8.4(1) states in part: "It is professional misconduct for a lawyer to: (1) Violate or attempt to violate the Rules of Professional Conduct..." Rule 1.8(j) states that "A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced."

There was insufficient evidence to demonstrate that the Respondent attempted to have sexual relations with Ms. Shadrick.

Rule 8.4(2):

There was insufficient evidence to demonstrate that the Respondent violated Rule 8.4(2) by engaging in a criminal act.

Rule 8.4(4):

We find that there is clear and convincing evidence that the Respondent violated Rule 8.4(4) by engaging in conduct prejudicial to the administration of justice when he violated the conditions on his order of reinstatement.

The evidence shows that the Respondent was under a court condition to steer his practice away from the representation of women in domestic relations matters. The

Respondent knew that Ms. Shadrick's criminal charges arose from a domestic dispute involving her ex-boyfriend and his new girlfriend. The Respondent's fee agreement stated that the criminal matter involved "domestic violence." The Respondent testified that part of his advocacy in the criminal matter involved an attempt to have this case accepted into a diversionary program with Family Relations. The Respondent claimed that the court order precluded him from pursuing a restraining order for Ms. Shadrick as part of his representation.

The condition that Respondent steer his practice away from the representation of women in domestic relations matters was placed on the Respondent to protect the public and, in particular, vulnerable women in difficult domestic situations from unwanted and inappropriate sexual advances by the Respondent. While in this case, there was insufficient evidence to demonstrate that the Respondent attempted to engage Ms. Shadrick in a sexual relationship, Ms. Shadrick believed that the Respondent did not intend to advocate properly for her unless she engaged in sexual acts with him. The attorney-client relationship broke down because the Respondent could not pursue a restraining order on her behalf and because of her perception regarding his advocacy. Ms. Shadrick was in the category of people who should have been protected by the condition placed on Respondent's ability to practice law. He should never have undertaken her criminal matter because he knew it involved domestic relations and allegations of domestic violence. For the foregoing reasons, we believe there is clear and convincing evidence that the Respondent violated Rule 8.4(4) by undertaking the representation of a woman in a criminal matter involving domestic relations in violation of the court ordered condition on his ability to practice law and that his actions were prejudicial to the administration of justice.

Since we conclude that the Respondent violated Rule 8.4(4) of the Rules of Professional Conduct, we direct the Disciplinary Counsel to file a presentment against the Respondent in the Superior Court for the imposition of whatever discipline is deemed appropriate.

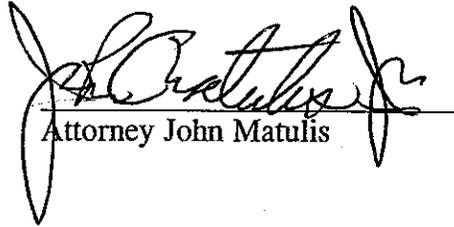
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DECISION DATE: 9/18/09

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Decision

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Attorney John Matulis



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Mr. John Walsh

I concur in part and dissent in part.

I concur with my colleagues that there is clear and convincing evidence that the Respondent violated Rule 8.4(4) in accepting this case in violation of his court ordered condition. I also concur that there was insufficient evidence that the Respondent violated Rule 8.4(2) of the Rules of Professional Conduct.

I respectfully dissent on the issue of whether the Respondent violated Rule 8.4(1) of the Rules of Professional Conduct because I find by clear and convincing evidence that the Respondent attempted to violate Rule 1.8(j) when he attempted to have a sexual relationship with the Complainant.

I find the following additional facts by clear and convincing evidence:

In September of 2007, Ms. Shadrick met with the Respondent at his office on Prospect Street in Torrington, Connecticut. Ms. Shadrick needed legal representation in a criminal matter. Ms. Shadrick and the Respondent did not have a consensual sexual relationship prior to the commencement of the client-lawyer relationship. She hired the Respondent to represent her in the criminal case in Bantam. At the time of the initial interview, the Respondent told Ms. Shadrick that she owed him a naked backrub. Ms. Shadrick then made an appointment for an intake interview at the Respondent's new office on Cook Street in Torrington, Connecticut. At the time of the initial interview, the Respondent had moved out of the Prospect Street office, but still retained the keys to the office.

On September 27, 2007, Ms. Shadrick went to the Respondent's Cook Street office and retold her story in the presence of the Respondent and Michelle Roche. At that time, the Respondent signed a retainer agreement but did not provide the Respondent with the \$1,500.00 retainer requested. The retainer agreement noted that the representation was for a criminal matter involving "domestic violence". In October, Ms. Shadrick was arrested on a different charge and the Respondent agreed to represent her in the second matter. The Respondent did not request or receive any retainer, nor did he provide Ms. Shadrick with a new retainer agreement.

On November 2, 2007, the Respondent met Ms. Shadrick at the Bristol courthouse and told her that her case had been continued to consolidate the matter with the Bantam case. The Respondent walked Ms. Shadrick to his car to put her file away. The Respondent made remarks that suggested that he wanted to get together with Ms. Shadrick for "kinky sex". Ms. Shadrick then left the Respondent to drive home. She called her sister and told her what had happened with the Respondent. The Respondent repeatedly text messaged Ms. Shadrick saying,

--at 9:57 a.m. "Thanks for chatting and relax, you will be fine."

--at 10:01 a.m. "Know please call or text me anytime. I am here for you."

--at 10:03 a.m. "I hope you did not get upset at me."

Ms. Shadrick then sent a text message to Respondent explaining she was talking to her sister and would talk to him later. He text messaged, "No problem." at 10:16 a.m. Then at 10:23 a.m., he wrote: "So since you didn't yell at me, when do I get to see you?" Ms. Shadrick did not respond to the later text messages.

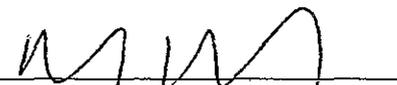
Ms. Shadrick came to the Respondent's office at about 3:00 p.m. on November 19, 2007. The Respondent was with a client. After speaking with Michelle Roche and waiting, Ms. Shadrick eventually saw the Respondent. Ms. Roche made copies for Ms. Shadrick. The Respondent brought Ms. Shadrick into a room alone, reassured her that the case would be okay, gave her the tape recording, hugged her and kissed her on the cheek.

The Respondent did not request or accept a legal fee from Ms. Shadrick but performed significant legal work for her. Ms. Shadrick could reasonably have believed that the Respondent would not properly handle her criminal complaints if she did not engage in a sexual relationship with him.

I find the Ms. Shadrick's testimony credible as to what transpired between them during Ms. Shadrick's office visits and what occurred after their first court appearance. Specifically, I find credible her testimony that the Respondent brushed up against her, and hugged and kissed her. I also find credible her testimony that the Respondent told her that he worked for backrubs, that he "likes it kinky," and that when she took exception to these remarks the Respondent texted her to apologize. I find the Respondent's testimony not credible. Specifically, I find that the Respondent met with Ms. Shadrick at the Prospect Office alone in order to circumvent Judge Holzberg's order regarding maintaining procedures to prevent being alone with female clients. I find his denials regarding hugging and kissing and saying he "likes it kinky" unconvincing, and his explanation for texting her afterwards nonsensical.

In conclusion, the Respondent violated Rule 8.4(1) when he attempted to violate Rule 1.8(j). The Respondent made several inappropriate sexual comments and touched Ms. Shadrick in an inappropriately intimate manner. Based on this clear and convincing evidence, I believe that the Respondent violated Rule 8.4(1) in that he attempted to violate Rule 1.8(j) of the Rules of Professional Conduct by attempting to engage in a sexual relationship with Ms. Shadrick.

Therefore, I respectfully dissent.

  
Attorney David Channing