

STATEWIDE GRIEVANCE COMMITTEE

John Febroriello, et al.
Complainant

:

vs.

: Grievance Complaint #05-0697

Zbigniew Rozbicki
Respondent

:

John Febroriello, et al.
Complainant

:

vs.

: Grievance Complaint #05-0727

Zbigniew Rozbicki
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 April 28, 2006. The hearing addressed the record of grievance complaint #05-0697 that was filed on July 26, 2005, and the record of grievance complaint #05-0727 that was filed on August 5, 2005. The hearing also addressed the probable cause determination filed by the Litchfield Judicial District Grievance Panel on November 28, 2005 in the matter of grievance complaint #05-0697, finding that there existed probable cause that the Respondent violated Rules 3.1, 3.3(a)(1) and 8.4(4) of the Rules of Professional Conduct and the probable cause determination filed by the Litchfield Judicial District Grievance Panel on November 28, 2005 in the matter of grievance complaint #05-0727, finding that there existed probable cause that the Respondent violated Rules 3.1, 3.3(a)(1) and 8.4(4) of the Rules of Professional Conduct.

Notices of the hearings were mailed to the Complainant, to the Respondent and to the Office of the Chief Disciplinary Counsel on January 30, 2006. Hearings previously scheduled on March 2, 2006 were continued at the request of the Respondent. Pursuant to Practice Book §2-35(d), Chief Disciplinary Counsel Mark Dubois pursued the matter before this reviewing committee. The Complainant and the Respondent appeared at the hearing. The Respondent was represented by Attorney Kimberly Knox. William Yurchick testified on behalf of the Respondent. One exhibit was admitted into evidence. The two grievance matters were consolidated without objection at the commencement of the April 28, 2006 hearing.

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

The Complainant is a partner of the firm of Febbrioriello, Conti and Levy (hereinafter referred to as "FCL") located in Torrington, Connecticut. The Respondent is a solo practitioner whose office is also located in Torrington, Connecticut. The Complainant and the Respondent have known each other since grade school. In or around September of 1997, Christina Febbrioriello, known as Christina Yurchick at the time, retained FCL to represent her in a dissolution of marriage action against William Yurchick. Christina and William Yurchick had two children together. The Yurchick's divorce was finalized in September, 1998. *Yurchick v. Yurchick*, docket no.0074934, Litchfield Superior Court (1997). At the time the Yurchicks were divorced, the Complainant was married to Mary Jane Febbrioriello.

On June 5, 1999, Christina Febbrioriello and the Complainant were involved in a motorcycle accident in Cornwall. On February 7, 2001, Mary Jane Febbrioriello filed for divorce. The Complainant and Mary Jane Febbrioriello were divorced on December 21, 2001. In or around April of 2002, Christina Febbrioriello and the Complainant conceived a child. In the fall of 2002, the Complainant and Christina Febbrioriello were married in a civil ceremony. On January 21, 2003, Christina Febbrioriello gave birth to a daughter who was named Isabella. In August of 2003 the Complainant and Christina Febbrioriello celebrated their marriage publicly. The ceremony was attended by Christina Febbrioriello's children and Isabella Febbrioriello.

On July 15, 2005, Attorney Dina M. Menchetti, an associate at FCL, filed a motion for modification of child support on behalf of Christina Febbrioriello. Thereafter, Mr. Yurchick contacted several attorneys attempting to retain someone to assist him. Finally, he was able to retain the Respondent to represent him. Mr. Yurchick advised the Respondent that the Complainant continually interfered with his visitation with his children. Mr. Yurchick told the Respondent that his wife and the Complainant carried on a sexual affair while still married to their respective spouses. Based on the information provided to the Respondent by Mr. Yurchick, the Respondent filed a motion to disqualify Attorney Menchetti and FCL from representing Christina Febbrioriello. The motion to disqualify was based on an alleged conflict of interest created by the Complainant's relationship with Christina Febbrioriello. The motion to disqualify also stated that the Complainant and Attorneys Stephen Levy and William Conti would be called as witnesses. The basis for the motion to disqualify was stated, in part, as follows:

The defendant respectfully represents that the principal of Febbrioriello, Conti and Levy, John Febbrioriello, while representing the plaintiff in the original dissolution action, and while married to Mary Jane Febbrioriello, engaged in an illicit and extramarital relationship with his client, the plaintiff in the above entitled action which continued throughout the

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pendency of the captioned dissolution action and at some point fathered an illegitimate child with the defendant's ex-wife.

Thereafter, the Complainant demanded that the Respondent retract the allegations made in the motion to disqualify. The Complainant provided the Respondent with precise dates that contradicted the Respondent's claim that Isabella Febbrioriello was born illegitimate. On July 25, 2005, the Respondent withdrew the motion to disqualify. On July 28, 2005, the Respondent filed a substitute motion to disqualify counsel. In the motion to disqualify, the Respondent removed the section of the statement that read, "and at some point fathered an illegitimate child with the defendant's ex-wife". However, the Respondent stated that the Complainant and Christina Febbrioriello's illicit relationship continued throughout the Complainant's representation of Christina Febbrioriello and that they had a child.

The Respondent also filed a motion for contempt dated July 21, 2006 on behalf of Mr. Yurchick alleging that Christina Febbrioriello and the Complainant continually interfered with Mr. Yurchick's visitation rights. On July 22, 2005, the Respondent filed a motion for a continuance of the Complainant's motion for contempt and motion for modification, to provide time for the court to rule on the motion to disqualify the Complainant and his firm. The Respondent's motion stated that Attorney Menchetti was an associate of FCL and that the Complainant was her supervisor. The motion went on to state that the Complainant represented Christina Febbrioriello in her dissolution action and that he had an illicit affair while doing so. The Respondent omitted the word "illegitimate" from his motion; however, he stated the following:

The illicit relationship continued throughout (the Complainant's) representation of (Christina Febbrioriello) and produced a child of their bodies... .

Finally, at paragraph five of the motion for continuance, the Respondent asserted the pending motion to disqualify as the reason for the motion for continuance.

The Respondent subsequently filed a motion to seal the motion to disqualify and the motion for continuance. In the motion to seal the Respondent reiterated the statements regarding the Complainant's sexual relationship with his client and the ensuing conception of their child. The Respondent did, however, advise the court that the statement regarding Isabella's legitimacy was erroneous. On September 15, 2005, Attorney Michael Sconyers filed his appearance on behalf of Christina. Attorney Sconyers was not associated with FCL.

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This reviewing committee also considered the following:

The Respondent asserted that Mr. Yurchick was referred to him by individuals whom he respected and that he was told that Mr. Yurchick was a credible and honest person. The Respondent averred that he believed Mr. Yurchick's claims that the Complainant had an affair with Christina Febbrioriello while he was still married to Mary Jane Febbrioriello and while Christina Febbrioriello was still married to Mr. Yurchick and that their child was illegitimate. The Respondent produced a copy of the accident report for the motorcycle accident that occurred on June 5, 1999 to support his statement that the Complainant engaged in a illicit relationship with Christina Febbrioriello while he was still married to Mary Jane Febbrioriello.

Mr. Yurchick testified that when he retained the Respondent in July of 2005 he believed that the Complainant and his ex-wife had engaged in a sexual relationship and that they conceived a child out of wedlock. Mr. Yurchick also testified that, while he and Christina Febbrioriello were divorcing, he did not believe that the Complainant and Christina Febbrioriello's affair was an issue. However, Mr. Yurchick testified that after their divorce was final he came to suspect the Complainant and Christina Febbrioriello had engaged in a sexual relationship while he and Christina Febbrioriello were still married.

This reviewing committee finds the following violations of the Rules of Professional Conduct by clear and convincing evidence:

Rule 3.3(a)(1) of the Rules of Professional Conduct states that a lawyer shall not knowingly make a false statement of material fact or law to a tribunal. The commentary to the Rule states that "[a]n advocate is responsible for pleadings and other documents prepared for litigation, but is usually not required to have personal knowledge of matters asserted therein, for litigation documents ordinarily present assertions by the client, or by someone on the client's behalf, and not assertions by the lawyer". This reviewing committee finds that the record sufficiently supports the Respondent's contention that the Complainant and Christina Febbrioriello engaged in a sexual relationship while FCL represented Christina Febbrioriello. We further conclude that it was reasonable for the Respondent to accept as truth Mr. Yurchick's assertions that the sexual relationship commenced while the Yurchicks were still married, while the Complainant was still married to Mary Jane Febbrioriello, and that the couple conceived and bore a child out of wedlock. We also find that the Respondent made a reasonably diligent inquiry and that he believed the statements made in the motions to be true. Consequently, we do not find a violation of Rule 3.3(a)(1) of the Rules of Professional Conduct.

The Respondent had a clear-cut basis for filing a motion to disqualify the Complainant and his firm from representing Christina Febbrioriello due to the Complainant's relationship with her at the time he filed the motion. However, this reviewing committee concludes that the Respondent's use of the language describing the Complainant's child as illegitimate, and

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his inclusion of the allegation of a sexual affair between the Complainant and his client in a motion intended to be considered by the court and made part of the public record was totally unnecessary to the merits of the motion to disqualify. Further, including such inflammatory facts in the motion, irregardless of its truth or falsity, could only be inferred to have been done primarily for the purpose of embarrassing, harassing or maliciously injuring the Complainant and for that reason, it can only be perceived as frivolous. Accordingly, we conclude that the inclusion of the offensive language, whether true or not, was wholly unnecessary and in violation of Rule 3.1 of the Rules of Professional Conduct.

As to the motion for a continuance, this reviewing committee concludes that the Respondent was justified in filing the motion for a continuance to allow the court time to rule on the valid motion to disqualify. However, this reviewing committee concludes that the Respondent's inclusion of an allegation of a sexual affair between the Complainant and his client in a motion intended to be considered by the court and made part of the public record was completely unnecessary to the merits of the motion. In addition, including such provocative statements in the motion, particularly after being made aware of the Complainant's position on the inclusion of such statements, could only be inferred to have been done primarily for the purpose of embarrassing, harassing or maliciously injuring the Complainant and, for that reason, can only be perceived as frivolous. Accordingly, we conclude that the inclusion of the offensive language in the motion for continuance, whether true or not, was unwarranted and constitutes an additional violation of Rule 3.1 of the Rules of Professional Conduct.

This reviewing committee finds particularly disturbing the fact that, although the Respondent filed a motion to seal the two motions after being advised by the Complainant of their inaccurate contents, the motion to seal again contained several offensive statements. This reviewing committee finds that the Respondent knew or should have known that, even if the court sealed the two motions, the motion to seal would remain a part of the public record. As a result, the offensive statements would also remain part of the public record. Accordingly, this reviewing committee finds the Respondent's suggestion that, by filing the motion to seal he attempted to mitigate the damages, is without merit.

Finally, this reviewing committee concludes that the Respondent's conduct did not interfere with the divorce proceedings to the extent that the conduct could be construed to have been prejudicial to the administration of justice in violation of Rule 8.4(4) of the Rules of Professional Conduct. For the foregoing violations of the Rules of Professional Conduct, the Respondent is reprimanded.

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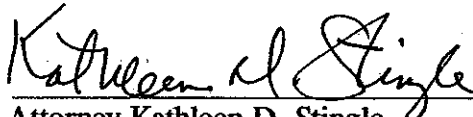


Attorney Tracie Molinaro

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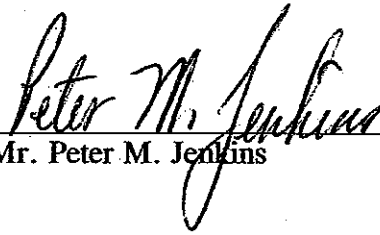
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Attorney Kathleen D. Stingle

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Mr. Peter M. Jenkins

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