

STATEWIDE GRIEVANCE COMMITTEE

Carol Ann McGowan  
Complainant

vs.

Grievance Complaint #09-0102

Charles Irving  
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 May 13, 2009. The hearing addressed the record of the complaint filed on February 3, 2009, and the probable cause determination rendered by the Middlesex Judicial District Grievance Panel, finding that there existed probable cause that the Respondent violated Rules 1.5(a) and (b), and 1.15(b) of the Rules of Professional Conduct.

Notice of the May 13, 2009 hearing was mailed to the Complainant, to the Respondent and to the Office of the Chief Disciplinary Counsel on April 9, 2009. Pursuant to Practice Book §2-35(d), Assistant Disciplinary Counsel Karyl Carrasquilla pursued the matter before this reviewing committee. Both the Complainant and the Respondent appeared and testified. One exhibit was admitted into evidence.

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

On or about May 21, 2004, the Complainant hired the Respondent to represent her in a marriage dissolution. The Respondent sent the Complainant a letter explaining the scope of the representation and that he would charge the rate of \$375 per hour. He requested and received an initial retainer of \$10,000. The fee agreement stated that when and if the retainer was exhausted, he would discuss additional amounts that might become due. His retainer agreement did not state he would send monthly statements.

The Respondent began his legal representation of the Complainant. He did not send monthly statements to her showing the hourly billing against her retainer. On November 1, 2004, the Respondent sent the Complainant an invoice explaining that the \$10,000 retainer had been exhausted and that the Complainant owed \$1,803.70, including costs and expenses. On December 1, 2004, the Respondent sent the Complainant an invoice for \$90.40 for additional costs and expenses. On December 6, 2004, the Respondent sent the Complainant an additional invoice requesting \$6,894.10, which represented \$1,894.10 owed along with a request for \$5,000 to replenish the retainer. On December 9, 2004, the

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Complainant sent the Respondent a check for \$6,894.10, which represented the \$5,000 retainer and the \$1,894.10 due on her bill.

On January 1, 2005, the Respondent sent the Complainant a bill for \$1,250. The invoice does not acknowledge the receipt of the additional \$5,000 retainer or apply the retainer to the balance due. On February 1, 2005, the Respondent sent the Complainant a bill for \$3,275, in which he noted the \$1,250 past due, but again did not acknowledge the receipt of the retainer or apply it to the bill. All together, the Respondent charged the Complainant \$24,569.10 for legal representation during her marriage dissolution. The bills were as follows:

Date of Invoice	Amount of Invoice
November 1, 2004	\$11,803.70
December 1, 2004	\$ 90.40
January 1, 2005	\$ 1,250.00
February 1, 2005	\$ 3,275.00
March 1, 2005	\$ 1,275.00
April 1, 2005	\$ 875.00
May 1, 2005	\$ 1,250.00
June 1, 2005	\$ 3,875.00
July 1, 2005	\$ 875.00
<u>TOTAL</u>	<u>\$24,569.10</u>

Because the Respondent did not credit the Complainant's retainer, she continued to pay his monthly bills without receiving the credit. Over the course of the Respondent's representation, the Complainant paid the Respondent \$28,694.10. After the Respondent's representation concluded, the Complainant called the Respondent and requested an explanation of her bill. She refused to pay the July 1, 2005 bill because she believed that she had a credit with the Respondent. In 2006, the Complainant sent at least one inquiry by e-mail with questions about the billing. The Respondent did not provide the Complainant with a satisfactory explanation. In June of 2008, the Complainant wrote to the Respondent requesting specific invoices to complete her records. The Respondent told the Complainant that the records were not available. On August 15, 2008, the Complainant wrote to the Respondent again requesting copies of invoices or a reconstruction. On August 19, 2008, the Respondent wrote on the Complainant's letter "I told you before that these records are no longer available. Do not contact me again." He sent her letter back.

On November 13, 2008, the Complainant wrote to the Respondent explaining that she thought she had been overcharged. She requested "either the reimbursement amount

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due or a satisfactory explanation and supporting evidence to show why this amount is not due back to me.” The Respondent did not respond to the Complainant. On December 12, 2008, the Complainant filed a claim for reimbursement with the Client Security Fund. On December 29, 2008, the Respondent responded to the claim and provided the Client Security Fund with all of the invoices sent to the Complainant, including the missing invoices she had requested. Although the Respondent had these invoices in his possession, he did not send the copies the Complainant requested to her.

The Respondent does not keep track of his billing with contemporaneous notes. In this case, the Respondent explained his billing practices are based on approximations.

I've been in practice long enough to know that if I write a letter, for example, I know I wrote the letter and I know approximately how long it took me to write that letter. If I did a pleading, I know that I did the pleading and I know approximately how long it took me to do that pleading....  
May 13, 2009 Hearing Tr. at 28.

Respondent's bills did not itemize the particular work the Respondent did for the Complainant. All of the bills merely state: "Continuing representation of [Complainant] in the matter of [Case name and docket number] for the period [previous month]"

This reviewing committee also considered the following:

The Respondent claimed that the total fee for his representation, as billed, was \$31,463.20. The Respondent did not provide an accounting to support this amount. The amount the Respondent claimed was owed is exactly \$6,894.10 more than what was billed. We believe the Respondent erred by counting the December 6, 2004 invoice of \$6,894.10 as a bill when it actually represented a request for an additional retainer and a second request for payment of fees already billed.

The Respondent offered into evidence a reconstruction of his billing created by a recent review of the file. The reconstructed invoice was not based on any contemporaneous time records or attorney notes. The reconstructed invoice claimed the Respondent spent 129 hours on legal representation and that this time was worth \$48,375.00.

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.

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Rule 1.5(a):

Rule 1.5(a) of the Rules of Professional Conduct states: "A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses." The Rule then cites eight factors to be considered in determining the reasonableness of a fee. This reviewing committee believes that the relevant factors to be considered in this case are: "(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly"; and "(4) the amount involved and the results obtained."

The evidence shows that the Respondent collected a legal fee of \$28,694.10 from the Complainant, but billed her \$24,569.10. When asked for an explanation of his fees, the Respondent refused to provide the Complainant with any information, and refused to even look through the Complainant's file or on the computer for an explanation of the bills. We find by clear and convincing evidence that the Respondent overcharged the Complainant and collected an unreasonable fee.

The Respondent agreed that he would bill the Complainant based on the time he spent on her file. By his own admission, the Respondent did not keep contemporaneous time records and "approximated" how much time each item in his file would have taken him to do. Further, the Respondent did not send monthly billing statements showing fees as earned to the Complainant until he had exhausted her retainer. The Respondent did not give the Complainant the opportunity to review how her retainer was being spent or explain what specific legal services were being accomplished. We find his bills fall far below what is customary for billing a client for legal services at an hourly rate. When an attorney bills a client at an hourly rate, he should make reasonably contemporaneous notes of the time spent on the file and he should provide a specific explanation of the type of work done (e.g., attending court, preparing pleadings, reviewing or drafting correspondence, telephone calls).

For all of the foregoing reasons, we find by clear and convincing evidence that the Respondent violated Rule 1.5(a) by collecting \$4,125 more than the Complainant was billed. We also find the Respondent's billing practices were unreasonable, under these circumstances, because he failed to keep contemporaneous time sheets of his time or provide the Complainant with accurate itemized bills.

Rule 1.5(b):

Rule 1.5(b) states, in part: [T]he basis or rate of the fee and expenses for which the client will be responsible, shall be communicated to the client, in writing, before or within

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a reasonable time.... Any changes in the basis or rate of the fee or expenses to be billed shall also be communicated....”

This reviewing committee finds by clear and convincing evidence that Respondent’s conduct also violated Rule 1.5(b) in that he did not actually charge the client the rate stated in his retainer agreement. The retainer agreement stated the Respondent would charge the Complainant on an hourly basis. The evidence shows that the bills the Complainant received were based on the Respondent’s approximation of time spent and not the actual time he spent on the file.

Rule 1.15(b):

Rule 1.15(b) (2006)<sup>1</sup>, states, in part: “[A] lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third party, shall promptly render a full accounting regarding such property.”

The evidence shows that the Complainant requested specific invoices from the Respondent and he failed to provide them. When the Complainant inquired into the Respondent’s billing practices, the Respondent treated her disrespectfully and refused to provide her with requested copies of invoices and refunds. The Complainant then requested a full accounting from the Respondent when she wrote to him requesting, “either the reimbursement amount due or a satisfactory explanation and supporting evidence to show why this amount is not due back to me.” The Respondent failed to provide a full accounting of the retainer, failed to figure out that he had in fact overcharged the Complainant and failed to return the money.

This reviewing committee finds by clear and convincing evidence that the Respondent violated Rule 1.15(b) of the Rules of Professional Conduct.

Since we conclude that the Respondent violated Rules 1.5(a) and (b) and 1.15(b)(2006) of the Rules of Professional Conduct, we reprimand the Respondent. In addition, we order the Respondent to pay the Complainant restitution in the amount of \$4,125, which is the difference between the fee collected and the amount billed. The Respondent is ordered to provide the Complainant with full restitution within thirty days of

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<sup>1</sup> Rule 1.15 of the Rules of Professional Conduct was substantially amended on June 26, 2006 and the effective date of those changes was September 1, 2006. It is clear from the Grievance Panel’s decision finding probable cause that they were referring to the 2006 Rules of Professional Conduct in referencing the subsection. The exact same language is now contained in Rule 1.15(e).

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the date of this decision. The Respondent is further ordered to notify the Statewide Grievance Committee of his compliance with this condition within ten days of making restitution.

(D)

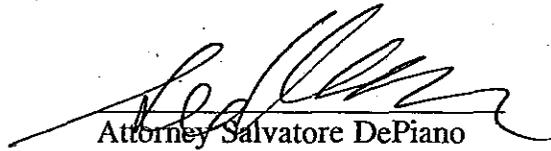
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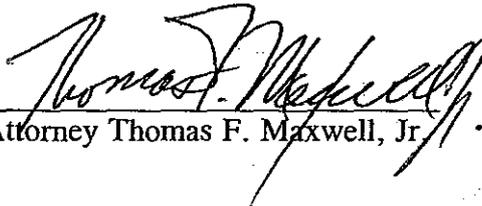
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Attorney Salvatore DePiano

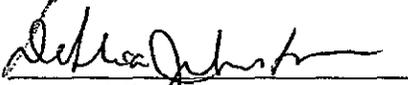
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Attorney Thomas F. Maxwell, Jr.

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Ms. Dahlia Johnston