

STATEWIDE GRIEVANCE COMMITTEE

Pauline Reiter  
Complainant

vs.

Keith Rubenstein  
Respondent

Grievance Complaint #09-0768

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, 235 Church Street, New Haven, Connecticut on April 7, 2010. The hearing addressed the record of the complaint filed on August 28, 2009 and the probable cause determination filed by the Fairfield Judicial District Grievance Panel on December 18, 2009, finding that there existed probable cause that the Respondent violated Rules 1.1, 1.3, 1.4(3), 1.4(4) and 8.4(4) of the Rules of Professional Conduct.

Notice of the hearing was mailed to the Complainant, to the Respondent and to the Office of the Chief Disciplinary Counsel on March 1, 2010. Pursuant to Practice Book §2-35(d), Chief Disciplinary Counsel Mark A. Dubois, assisted by University of Connecticut Law School Student Intern, Kenneth Wieland, pursued the matter before this reviewing committee. The Complainant and Respondent appeared at the hearing and testified. This reviewing committee also heard the testimony of Aileen Donna Barkon. Attorney Robert C. E. Laney represented the Respondent.

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

In February of 2004, the Complainant's husband, Gilbert Reiter, retained the Respondent to represent him in connection with personal injuries sustained in an automobile accident on January 25, 2004. On or about March 8, 2006, the Respondent initiated civil litigation in the Bridgeport Superior Court on behalf of Mr. Reiter. Gilbert Reiter v. Jack Deragopian, et al (Docket number FBT CV06 5001550S) Thereafter, the Respondent did not comply with discovery requests in connection with the litigation. On August 31, 2006, the Defendant filed a motion for nonsuit. On January 25, 2007, the Court ordered compliance by February 23, 2007. The Respondent did not respond with discovery compliance. On March 5, 2007, the Defendant filed a motion for judgment of nonsuit. A judgment of nonsuit entered against the plaintiff on May 22, 2007 for noncompliance with discovery. The Respondent did not inform his client that the case had been nonsuited. On or about May 22, 2008, the Respondent filed a new action on behalf of Mr. Reiter, pursuant to Connecticut General Statutes §52-592 Accidental Failure of Suit. Gilbert Reiter v. Jack

Deragopian, et al (Docket number FBT CV 08 5016059S)

This reviewing committee also considered the following:

The Respondent testified that Mr. Reiter's new case is currently pending in the Bridgeport Superior Court. The Respondent further testified that his reason for not disclosing the nonsuit to his client was that he did not want "to take the risk, even if it was a miniscule risk, that the statute of limitations for a malpractice suit would commence running...." The Respondent further testified that when a case is nonsuited for failure to comply with discovery, he believes there's an "absolute right to file a new suit under the Accidental Failure of Suit statute." The Respondent indicated that he strategically did not respond to discovery because he knew that he had a year to refile, if the case was nonsuited. The Respondent further indicated that he treated the accidental failure of suit statute as "an extension of time."

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

This reviewing committee concludes that the Respondent engaged in unethical conduct in connection with his representation of Gilbert Reiter in civil litigation. The Respondent failed to exercise reasonable diligence in representing Mr. Reiter in violation of Rule 1.3 of the Rules of Professional Conduct, by intentionally failing to comply with discovery and by intentionally allowing a judgment of nonsuit to enter against Mr. Reiter. The Respondent's conduct in failing to respond to discovery was prejudicial to the administration of justice in violation of Rule 8.4(4) of the Rules of Professional Conduct. The Respondent failed to keep his client reasonably informed about the status of the case in violation of Rule 1.4 (a)(3) of the Rules of Professional Conduct, by failing to notify Mr. Reiter that his case was nonsuited.

This reviewing committee finds shocking the Respondent's testimony that he deliberately failed to respond to discovery; that he viewed the accidental failure of suit statute as a form of an extension of time; and that he intentionally failed to notify his client of the nonsuit.

The record lacks clear and convincing evidence to substantiate a finding that the Respondent violated Rules 1.1 and 1.4(a)(4) of the Rules of Professional Conduct.

Since we conclude that the Respondent violated Rules 1.4(a)(3), 1.3 and 8.4(4) of the Rules of Professional Conduct, we reprimand the Respondent.

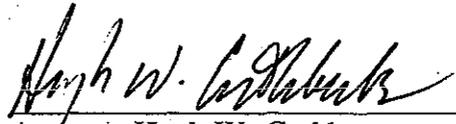
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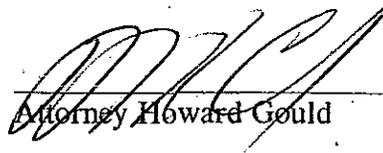
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Attorney Hugh W. Cuthberston

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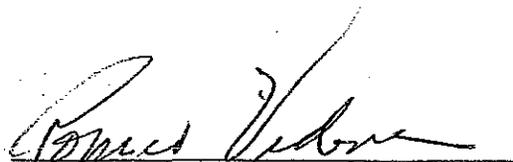
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Attorney Howard Gould

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Dr. Romeo Vidone