

STATEWIDE GRIEVANCE COMMITTEE

Christopher Soleau
Complainant

vs.

Grievance Complaint #07-1248

Robert F. Cohen
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, One Court Street, Middletown, Connecticut on May 8, 2008. The hearing addressed the record of the complaint filed on December 27, 2007, and the probable cause determination rendered by the New Britain Judicial District, the Judicial District of Hartford for Geographical Area 12 and the towns of Avon, Bloomfield, Canton, Farmington and West Hartford Grievance Panel on March 11, 2008, finding that there existed probable cause that the Respondent violated Rules 1.4(b) and 1.7(b) of the Rules of Professional Conduct.

Notice of the May 8, 2008 hearing was mailed to the Complainant, to the Respondent and to the Office of the Chief Disciplinary Counsel on April 1, 2008. Pursuant to Practice Book §2-35(d), Assistant Disciplinary Counsel Frank Blando pursued the matter before this reviewing committee. The Respondent was represented by Attorney Alfred F. Morrocco, Jr. The Complainant and the Respondent appeared and testified. The reviewing committee also heard testimony from Attorney Lewis, the Complainant's attorney, and Harold Wilcox, the Complainant's former business partner. Two exhibits were admitted into evidence.

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

In 2005 and 2006, Harold Wilcox was a real estate broker, mortgage originator and home builder. Mr. Wilcox was approached by Alkalie Dennie and they agreed to purchase a lot in Westbrook and build a house on that lot. The contract was structured using various corporate entities. The relationship broke down and the transaction did not proceed as planned. The property went into foreclosure. Mr. Wilcox did not have the credit available to get a loan to go forward with the construction. Mr. Wilcox met the Complainant who was interested in property development. Initially, Mr. Wilcox's wife and the Complainant's wife formed Rosewood Homes, LLC (hereinafter "Rosewood Homes") to develop the Westbrook property. Rosewood Homes purchased the property from James Mozzicato on July 14, 2005. The Complainant loaned the money to Rosewood Homes to purchase the lot. The Respondent represented Mr. Mozzicato, Rosewood Homes and the Complainant at this real estate closing. Rosewood Homes was not able to obtain a

construction loan to develop the property. The Complainant purchased the property from Rosewood Homes on May 15, 2006 and was able to obtain financing to develop the property. The Respondent represented Rosewood Homes and the Complainant at this real estate closing. The Complainant also financed two other development deals with Mr. Wilcox or related business entities.

At the May 15, 2006 closing, the Respondent represented both the buyer and the seller of the Westbrook property. The Complainant did not ask for separate representation or obtain his own counsel. The Respondent did not explain to the Complainant or Rosewood Homes that there was a concurrent conflict of interest in representing both the buyer and the seller in a real estate transaction. The Respondent did not explain to the Complainant that there was another concurrent conflict of interest in that the Respondent had represented Mr. Wilcox and his corporate entities in a prior failed real estate transaction on the Westbrook property. The Respondent also did not explain to the Complainant that both the Respondent and Mr. Wilcox's corporate entities were involved in litigation over the failed real estate transaction on the Westbrook property. The Respondent did not ask the Complainant to waive any of the conflicts of interest.

In July of 2005, Mr. Dennie filed a lawsuit against the Respondent and corporate entities controlled by Mr. Wilcox. The lawsuit sought money damages for a breach of contract in connection with the development of the Westbrook property. Neither the Respondent nor Mr. Wilcox disclosed the litigation to the Complainant. The Complainant was not made aware of the lawsuit until he was served as a defendant in the lawsuit and the plaintiff placed a *lis pendens* on the Westbrook property. The Complainant then spent substantial amounts of time and money extricating himself from the lawsuit.

In his answer, the Respondent admitted that "[t]here was no reason for me to discuss Mr. Wilcox's prior business with [the Complainant] and to do so would have been to breach Wilcox's expectation of confidentiality..." At the hearing, disciplinary counsel inquired as to what analysis or explanation the Respondent had provided about the conflict of interest.

Attorney Blando: Did you discuss with Mr. Soleau and/or Rosewood principals the potential for a conflict when one represents both the buyer and the seller?

Respondent: Well, you're going to have to enlighten me as to what the conflicts were in this particular case.

* * *

Attorney Channing: No, no. No, I'm sorry. He asked you a question. Did you inform them of any conflict of interest?

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Respondent: I had no specific conversation of that.

This reviewing committee also considered the following:

The Respondent argued that the Complainant and Mr. Wilcox were business partners. The Respondent claimed he did not negotiate the agreement on behalf of either party and merely acted as a scrivener, who put together closing documents. The Respondent did not believe there was a potential or actual conflict of interest in this situation. The Respondent also argued that the pending litigation did not need to be disclosed because the lawsuit demanded money damages rather than enforcement of the real estate contract, and therefore the lawsuit did not cloud the title or affect the real estate transaction.

The Complainant appeared to be a sophisticated businessman who knew that the Respondent was representing competing interests at the closing. The Complainant never asked for a separate attorney nor offered to hire his own attorney.

In more than twenty years at the bar, the Respondent does not have a public record of any discipline.

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

Rule 1.4(b) requires an attorney to explain a matter to the client to the extent necessary to make informed decisions regarding the representation. In this case, the Respondent knew about pending or current litigation that involved the Respondent personally, business entities of Mr. Wilcox and the property in question. The Respondent knew or should have known that it was necessary to explain to the Complainant that his representation was limited by the concurrent representation of Rosewood Homes and the past representation of Mr. Wilcox and his various business entities. The Respondent did not explain any of these issues to the Complainant. The Respondent failed to provide the Complainant with enough information to make an informed decision as to whether or not the Complainant should go forward with the real estate agreement and/or hire separate counsel. We conclude by clear and convincing evidence that the Respondent violated Rule 1.4(b).

At the time of the real estate closing, Rule 1.7(b) of the Rules of Professional Conduct stated:

A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's

responsibilities to another client or to a third person, or by the lawyer's own interests; unless:

(1) the lawyer reasonably believes the representation will not be adversely affected; and

(2) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

In this case, we conclude that both subsections of Rule 1.7(b) are applicable. We do not believe it was reasonable for the Respondent to represent both Rosewood Homes, the seller, and the Complainant, the buyer, in the purchase and sale of the Westbrook property because his ability to give legal advice was compromised. Although there is no outright prohibition against representing both the buyer and seller in a real estate transaction, we believe there are very few situations where an attorney can adequately represent both parties. Clients do not ask an attorney to be a mere scrivener at a real estate closing; they hire and pay the lawyer for his legal advice. In this case, it is patently clear that the Respondent's ability to give legal advice was compromised by his dual representation in violation of Rule 1.7(b)(1).

Even if it had been reasonable to represent both parties in this transaction, the Respondent still violated Rule 1.7(b)(2). Whenever an attorney partakes in the simultaneous representation of multiple parties, the attorney must also explain the conflict, as well as the advantages and risks involved in the multiple representation. In this case, the Respondent represented multiple parties for a long period of time without ever analyzing or explaining the concurrent conflict of interest among himself, Rosewood Homes, Mr. Wilcox and the Complainant. By the Respondent's own admission, he failed to see a conflict of interest or discuss the conflict with the Complainant. By his own admission, the Respondent had information about pending litigation against Mr. Wilcox's corporate entities and himself with regard to a prior failed business transaction involving the property. The Respondent did not tell the Complainant about the pending litigation. We are not persuaded by the fact that another attorney may not have found out about the litigation because there was no cloud on the title at the time of the real estate closing. By representing the Complainant, the Respondent ensured that the Complainant would not find out about the pending litigation and receive legal counsel regarding the purchase of the property. This reviewing committee finds by clear and convincing evidence that the Respondent violated Rule 1.7(b) of the Rules of Professional Conduct.

Since we conclude that the Respondent violated Rules 1.4(b) and 1.7(b) of the Rules of Professional Conduct, we order the Respondent to attend in-person a continuing legal education ("CLE") course in legal ethics. The CLE course is to consist of a minimum of

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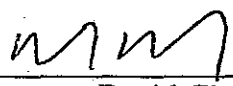
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three credit hours, and is to be taken, at the Respondent's own expense, within six months of the issuance of this decision. The Respondent is further ordered to provide the Statewide Grievance Committee with written confirmation of his compliance with this condition within thirty days of completion of the CLE course.

(D)
EMR

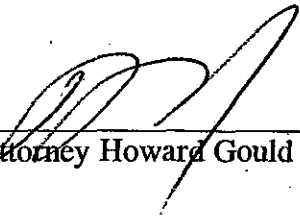
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Attorney David Channing

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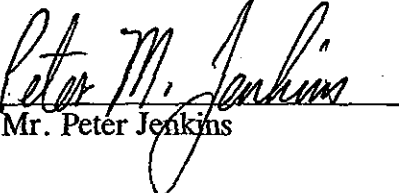


Attorney Howard Gould

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Mr. Peter Jenkins