D'Attilo

RETAINER AGREEMENT

I. **PARTIES** - We, Domenic D'Attilo and Cathy D'Attilo, parents and natural guardians of Daniel D'Attilo; Cathy D'Attilo, individually, and Domenic D'Attilo, individually, (hereafter "the Client") retain the law firm of **KOSKOFF, KOSKOFF & BIEDER** (hereafter "K K & B") to investigate, and, if warranted, to represent the Client in a claim or claims against any party or parties arising out of the following:

II. **FEES** - Pursuant to statute, K K & B shall receive fees of 33 1/3% of the first $300,000.00, 25% of the next $300,000.00, 20% of the next $300,000.00, 15% of the next $300,000.00, and 10% of any amount in excess of $1,200,000.00 of the total recovered, whether by way of settlement or award, before deduction of liens, costs and expenses. If that statute is not in effect at the time money is to be distributed to the Client, K K & B shall receive fees of twenty-eight percent (28%) of the total recovered. The Client authorizes K K & B to deduct said fees, liens, costs and expenses out of monies received from said party or parties. If all or any part of the settlement or award is to be paid in installments (a "structured settlement") the fee shall be based upon the present cost of such settlement or award; all fees, liens, costs and expenses shall be paid from the first monies received.

It is agreed that this employment is on a contingent fee basis. If no recovery is made, the Client shall not owe K K & B any sum as attorneys' fees or repayment of costs.

III. **COSTS AND EXPENSES** - Costs and expenses include court fees, computer search/ research fees, investigation expenses, expert fees, and all other disbursements incurred in the prosecution or settlement of this action. K K & B agrees to advance all out of pocket costs and expenses in connection with this litigation. Upon settlement of the case, K K & B is authorized to deduct these costs and expenses from any settlement or award after the legal fee has been deducted.

IV. **SERVICES** - This fee agreement applies to all services rendered up to, and including, the award of damages by the trier of fact, but not to matters ancillary to the above claims, such as probate court proceedings, guardianships, post trial hearings, and appeals.

At the conclusion of the case all documents relating to the case will be electronically stored for six years. Documents conferring or imposing legal rights upon you will be provided to you at the conclusion of the case.

V. **DISPUTES** - Any disagreements that arise between K K & B and the Client, with respect to fees, costs, expenses, and/or interest due, shall be settled by binding arbitration.

Dated at Brampton this 21st day of March, 2003.

KOSKOFF, KOSKOFF & BIEDER

THE CLIENT

Domenic D'Attilo, Individually and
As Parent and natural guardian of
Daniel D'Attilo, a minor

Cathy D'Attilo, Individually and as
Parent and natural guardian of
Daniel D'Attilo, a minor

RETAINER AGREEMENT

I. PARTIES - I, **Cathy D'Attilo**, (hereafter "the Client") retain the law firm of KOSKOFF, KOSKOFF & BIEDER, P.C. (hereafter "K K & B") to investigate, and, if warranted, to represent the Client in a claim or claims against any party or parties arising out of the following:

II. FEES - The Client agrees that K K & B shall receive fees of thirty-three and one-third percent (33 1/3%) of the total recovered, whether by way of settlement or award, before deduction of liens, costs and expenses. The Client authorizes K K & B to deduct said fees, liens, costs and expenses out of monies received from said party or parties. If all or any part of the settlement or award is to be paid in installments (a "structured settlement") the fee shall be based upon the present cost of such settlement or award; all fees, liens, costs and expenses will be paid from the first monies received.

It is agreed that this employment is on a contingent fee basis. If no recovery is made, the Client shall not owe K K & B any sum as attorneys' fees.

At the conclusion of the case all documents relating to the case will be electronically stored for six (6) years. Documents conferring or imposing legal rights upon you will be provided to you at the conclusion of the case.

III. WAIVER - There is a statute which sets forth fee limits in contingent fee contracts which limits are set forth in attached Exhibit A. The law allows voluntary waiver of this statute. In view of the complex nature of this case, the expense involved in prosecuting this case, the agreement by K K & B to advance all costs and expenses on the Client's behalf, and the expertise of K K & B in handling cases of this nature, the Client hereby knowingly waives the statutory fee limits. In no event, will the fee exceed thirty-three and one-third percent (33 1/3%).

IV. COSTS AND EXPENSES - Costs and expenses include court fees, investigation expenses, expert fees, and all other disbursements incurred in the prosecution or settlement of this action. K K & B agrees to advance all out of pocket costs and expenses in connection with this litigation. Upon settlement of the case, K K & B is authorized to deduct these costs and expenses from any settlement or award after the legal fee has been deducted.

V. SERVICES - This fee agreement applies to all services rendered up to, and including, the award of damages by the trier of fact, but not to matters ancillary to the above claims, such as probate court proceedings, guardianships, and appeals.

VI. REFERRING COUNSEL - Attorney Richard A. Silver, Esq. is participating counsel in this matter and will share in the fee paid to K K & B.

VII. DISPUTES - Any disagreements which arise between K K & B and the Client, with respect to fees and costs and expenses due, shall be settled by binding arbitration.

Dated at _____, CT this ____ day of _____, ____.

KOSKOFF, KOSKOFF & BIEDER

_____

THE CLIENT

_____
Cathy D'Attilo

EXHIBIT A

Connecticut General Statutes Section 52-251c

33 1/3% of the first $300,000.00
25% of the next $300,000.00
20% of the next $300,000.00
15% of the next $300,000.00

10% of any amount in excess of $1,200,000.00

D'ATTILO V. VISCARELLO

We authorize our attorneys, Koskoff, Koskoff & Bieder, P.C., to decline the present offer of $18,000,000.00, as set forth below:

SETTLEMENT		$18,000,000.00
Attorney's Fees (28%)	$5,040,000.00	
Lawsuit Costs	+ 597,379.57	
		- 5,637,379.57
Net to Clients in Present Value		$12,362,620.43
Escrow for future costs, including probate-related issues		- 40,000.00
		$12,322,620.43

DATE: 1/4/12

APPROVED:

DOMENIC D'ATTILO

CATHY D'ATTILO

Adjustments:		
CL & P	$ 11,532.88	
Lawsuit Funding Solutions	215,956.00 (as of 2/15/12)	
		($227,488.88)

D'ATTILO V. VISCARELLO

We authorize our attorneys, Koskoff, Koskoff & Bieder, P.C., to settle our case for $22,500,000.00 present cash value. We understand that the net amount will be approximately $15,602,620.00 present cash value, as set forth below:

SETTLEMENT		$22,500,000.00
Attorney's Fees (28%)	$6,300,000.00	
Lawsuit Costs	+ 597,379.57	
		- 6,897,379.57
Net to Client in Present Value		$15,602,620.43
Escrow for future costs, including probate-related issues		- 40,000.00
		$15,562,620.43

DATE: 1/4/12

APPROVED:

DOMENIC D'ATTILO

CATHY D'ATTILO

Adjustments:

CL & P	$ 11,532.88
Lawsuit Funding Solutions	215,956.00 (as of 2/15/12)
	($227,488.88)

D'ATTILO V. VISCARELLO

We authorize our attorneys, Koskoff, Koskoff & Bieder, P.C. to settle our case for $25,000,000.00 present cash value. We understand that the net amount will be approximately $17,402,620.43.

SETTLEMENT		$25,000,000.00
Attorney's Fees (28%)	$7,000,000.00	
Lawsuit Costs as of 12/16/11	+ 597,379.57	
		- 7,597,379.57
Net to Clients in Present Value		$17,402,620.43
Adjustments:		
Escrow for future costs, including probate-related issues		- 40,000.00
		$17,362,620.43

DATE: 1/11/12

APPROVED:

DOMENIC D'ATTILO

CATHY D'ATTILO

Adjustments:		
CL & P	$ 11,532.88	
Lawsuit Funding Solutions	215,956.00 (as of 2/15/12)	
		- 227,488.88
		$17,135,131.55
Net to Danny (80%)	$13,708,105,24	
Net to Parents (20%)	$ 3,427,026.31	
	$17,135,131.55	

D'ATTILO V. VISCARELLO, et al

GROSS SETTLEMENT:	$	25,000,000.00
LESS:		
Attorney Fees (28%) per agreement	$	7,000,000.00
Approx Costs, Disbursements as of 3/15/2012	$	632,138.80
Escrow for future costs (including probate-related fees)	$	50,000.00
NET TO CLIENTS (in Present Cash Value):	$	17,317,861.20
75% to the Daniel Jacob D'Attilo Trust ("Trust")	$	12,988,395.90
25% to Domenic and Cathy D'Attilo	$	4,329,465.30
	$	-

75% to the Trust	$	12,988,395.90	25% to Domenic and Cathy D'Attilo	$	4,329,465.30
Adjustments:			*Adjustments:*		
Purchase of Structure	$	3,000,000.00	Payoff of CL&P lien with interest as of 2/29/12	$	12,034.38
Lawsuit Funding Solutions (amounts attributable to Daniel)	$	120,000.00	Lawsuit Funding Solutions (amounts attributable to Domenic and Cathy D'Attilo)	$	150,000.00
NET to the Trust	**$**	**9,868,395.90**	**NET to Domenic and Cathy D'Attilo**	**$**	**4,167,430.92**

APPROVED:

DOMENIC D'ATTILO, Individually and as Proposed Guardian of the Estate of Daniel Jacob D'Attilo

DATED: _____

_____

D'ATTILO V. VISCARELLO

Settlement		$25,000,000.00
Attorney's Fees (28%)	$7,000,000.00	
Lawsuit Costs as of 3/28/12	+632,138.87	
		-7,632,138.87
Net to Clients in Present Value		$17,367,861.13
Escrow for future costs, including probate-related issues (estimated)		-50,000.00
Net To Clients		$17,317,861.13

****

Danny 75% of $17,317,861.13	$12,988,395.85
Minus 50% of Adjustments*	-165,000.00
Net to Danny	$12,823,395.85
Parents 25% of $17,317,861.13	$ 4,329,465.28
Minus 50% of Adjustments*	-165,000.00
Net to Parents	$ 4,164,465.28

* Estimated Adjustments for Letter of Protection and Advancements (see attached) $ 330,000.00

DATE: _____ _____
DOMENIC D'ATTILO

DATE: _____ _____
CATHY D'ATTILO

SCANNED
DEC 20 2013

D'ATTILO V. VISCARELLO

SETTLEMENT		$25,000,000.00
Attorney's Fees (28%)	$7,000,000.00	
Lawsuit Costs as of 3/28/12	632,138.87	
Additional Cost to lawsuit**	2,925.86	
Nancy Cavaliere, RPT	13,400.00	
DayPitney LLP (probate fees & expenses)	33,674.14	
Net to Clients	17,317,861.13	
	$25,000,000.00	
Danny 75% of $17,317,861.13	$12,988,395.85	
Minus 50% of Adjustments**	164,180.55	
Keith Bradoc Gallant, Trustee, the Daniel Jacob D'Attilo Trust	$12,824,215.30	
Parents 25% of $17,317,861.13	$ 4,329,465.28	
Minus 50% of Adjustments*	164,180.55	
Cathy & Domenic D'Attilo	$ 4,165,284.73	
*Adjustments:		
G, P & S, LLC, Attorneys for C I. & P	$ 12,246.71	
Lawsuit Funding Solutions	316,114.39	
	$ 328,361.10	

**Wood LLP (tax attorney)

APPROVED
DATE:

CATHY D'ATTILO

DOMENIC D'ATTILO

Continuation of Complaint Form JD-GC-6, Explanation of Item #10

CONSOLIDATED STATEMENT OF FACTS
IN SUPPORT OF THE GRIEVANCE COMPLAINTS
FILED AGAINST THE FOLLOWING RESPONDENTS:

- Kathleen L. Nastri, ESQ.
- James D. Horwitz, ESQ.
- Michael P. Koskoff, ESQ.
- William M. Bloss, ESQ.
- Joel H. Lichtenstein, ESQ.
- Keith Bradoc Gallant, ESQ.
- Rebecca A. Iannantuoni, ESQ.

COMPLAINANTS:

- Cathy M. D'Attilo
- Domenic D'Attilo
- Daniel Jacob D'Attilo ppa by his parents

DATE: February 17, 2015 (¶56 Corrected 3/18/15)

1. Cathy M. D'Attilo is a Connecticut resident, graduated high school in Stamford, and did not attend college. She worked in various jobs and second jobs in high school and after until the birth of her son Danny D'Attilo.

2. Domenic D'Attilo is Danny's father. Domenic got as far as 11th grade in Norwalk, CT, when he left school at age 16 to work full time as a bricklayer.

3. Daniel Jacob D'Attilo (Danny) is a minor, born February 2, 2003. Danny is a special kid, just turned 12 years old, with a lot of spirit and a great heart, but he cannot talk or walk, has to be fed with liquid only through a feeding tube directly into his stomach and he will always require 24/7 care.

4. The Respondent, and the other six attorneys involved who are respondents in grievances simultaneously filed with the Committee (hereafter "Respondents" or "Co-Respondents"), are all highly experienced attorneys, most with statewide and national reputations. The attorneys are:

- Kathleen L. Nastri, Esq. who has been admitted to practice in Connecticut since 1986, Juris 305440, and on information and belief, at all relevant times was an employee of Koskoff, Koskoff & Bieder ("Koskoff Firm"). Attorney Nastri graduated from the University of Connecticut School of Law with honors, was past president of the Connecticut Trial Lawyers Association, and is the Treasurer of the American Association of Justice, among other things.

- James D. Horwitz, Esq. who has been admitted to practice in Connecticut since 1984, Juris 302451, and on information and belief, at all relevant times was an employee of the Koskoff Firm. He is also the managing attorney of the Koskoff Firm. Attorney Horwitz graduated from Benjamin N. Cardozo School of Law at Yeshiva University, and is Treasurer for several organizations including the Connecticut Trial Lawyers Association, among other things.

- Michael P. Koskoff, Esq. who has been admitted to practice in Connecticut since 1966, Juris 032237, and on information and belief, at all relevant times was an employee of the Koskoff Firm and is the Firm's President. Attorney Koskoff graduated from the University of Connecticut School of Law, and is a former president and current Board member of The Inner Circle of Advocates, limited to the top 100 trial lawyers in the nation, among other things.

- William M. Bloss, Esq. who has been admitted to practice in Connecticut since 1984, Juris 302902, and on information and belief, at all relevant times was an employee of the Koskoff Firm. Attorney Bloss graduated from the American University Washington College of Law and has been listed in the Best Lawyers in America since 2003, among other things.

- Joel H. Lichtenstein, Esq. who has been admitted to practice in Connecticut since 1975, Juris 372483, and on information and belief, at all relevant times was an employee of the Koskoff Firm, and is the Firm's treasurer. Attorney Lichtenstein graduated from the Boston University School of Law. He currently serves as co-chair of the American Association of Justice's Medical Negligence Information Exchange Group, among other things.

- Keith Bradoc Gallant, Esq. ("Brad Gallant") who has been admitted to practice in Connecticut since 1978, Juris 371050, and on information and belief, at all relevant times was an employee and partner of Day Pitney LLP. Attorney Gallant graduated *cum laude* from the University of Connecticut School of Law, has an LL.M from the University of London, is a past president of the Connecticut Bar Association, and has been designated by *Worth* magazine as one of the top 100 lawyers in the United States serving individual clients, among other things.

- Rebecca A. Iannantuoni, Esq. who has been admitted to practice in Connecticut since 2000, Juris 418294, and on information and belief, at all relevant times, was an employee of Day Pitney. Attorney Iannantuoni graduated *cum laude* from the Quinnipiac University School of Law, advises clients on estate planning, and elder/special needs, among other things.

OVERVIEW

5. On May 25, 2011, a Waterbury jury returned a verdict of $58.6 million in favor of Cathy, Domenic, and Danny D'Attilo, the largest medical malpractice judgment in Connecticut history, based on permanently disabling injuries that Danny suffered during the delivery process.

6. As Respondents Koskoff, Bloss, Horwitz, and Nastri wrote in November 2011 (G:11-16):

> The non-economic injuries in this case are massive. Defendants not only shortened Danny's expected life by half, but they also made that shortened life one where Danny must live in a broken shell of a body, aware of what is happening around him but unable to move or communicate or get better. …. Danny's future is bleak. There is no chance for improvement and, as he grows, he is at greater risk for complications and his care will become more difficult. **Danny's parents intend to keep him home and care for him so long as they are alive**. It is a testament to their meticulous attention to Danny so far that he has had limited physical complications from his cerebral palsy. In the event Danny outlives his parents, however, he likely will be placed in a group home without the same level of care. The risks of complications for Danny then increase, and the emotional trauma on Danny will be overwhelming.

7. The Koskoff firm had been representing the Complainants since March 21, 2003.

8. Because the litigation had been going on since 2005 and there had been a timely offer of judgment, the amount at stake exceeded $100 million with interest.

9. On January 11, 2012, the doctor's insurance company settled with the D'Attilos for $25 million.

10. Unfortunately, that is where this grievance begins.

11. The documentary evidence establishes that the Respondents acted in concert to defraud the D'Attilos out of millions of dollars.

12. A civil complaint has recently been filed against the Respondents seeking consequential, punitive, treble and/or other damages for conversion, statutory theft, civil conspiracy, breaches of fiduciary duty, legal malpractice, infliction of emotional distress, and other claims. *D'Attilo et al v. Koskoff, Koskoff & Bieder, P.C. et al*, NNH-CV14-6051836-S (December 2014).

13. Please note that the complaint filed in the civil suit and this Grievance Complaint do not include every single fact and every single document. They do contain detailed summaries of events based largely on review of documents turned over by the Respondents over the past nine months to the undersigned. The undersigned expects to obtain additional information and documents through the course of discovery and any relevant information will be turned over to the Committee at that time.

("G" followed by a number, such as G:1-2, refers to the page number of the attached exhibits. Emphasis in quotes is added.)

CHRONOLOGY OF EVENTS
2003-2009:

14. In late February 2003, while the extent of Danny's injuries were still unknown, the D'Attilos contacted the Koskoff Firm.

15. The Firm originally proposed a retainer agreement that would have provided the Koskoff Firm with a 33⅓ percent contingency fee for any recovery. G:1-2.

16. The proposed agreement also included a written client "WAIVER" of the otherwise required sliding scale for contingency fees pursuant to Conn. Gen. Stat. Section 52-251c. G:1.

17. This *proposed* agreement drafted by the Koskoff Firm shows that the Koskoff Firm fully understood no later than March 2003 that the Firm needed to include a specific waiver of rights for clients who agreed to a contingency fee in excess of that permitted by §52-251c.

18. A close relative of the D'Attilos was a part-time babysitter for an attorney. Their relative suggested showing the proposed agreement to the attorney. As a favor to the relative, the attorney contacted the Koskoff Firm which agreed to significantly reduce its fees by complying with the sliding scale requirements of §52-251c. G:3.

19. On March 21, 2003, the D'Attilos went to the Koskoff Firm's office in Bridgeport, and met with Co-Respondent Joel H. Lichtenstein.

20. The D'Attilos, and Attorney Lichtenstein on behalf of the Koskoff Firm, signed the negotiated Retainer Agreement which states that the Agreement was subject to the sliding scale of §52-251c:

> II. FEES - **Pursuant to statute**, K K & B shall receive fees of 33 1/3% of the first $300,000.00, 25% of the next $300,000.00, 20% of the next $300,000.00, 15% of the next $300,000.00, and 10% of any amount in excess of $1,200,000.00 of the total recovered, whether by way of settlement or award, before deduction of liens, costs and expenses.

21. A color copy of the original Retainer Agreement is attached as G:4-5. As can be seen, the D'Attilos did not waive *any* rights in the signed March 21, 2003 Agreement.

22. This meant that the Koskoff Firm agreed in writing with the D'Attilos to calculate contingency fees for any recovery only as per the statutory sliding scale: for the first $1.2 million based on the statutory tier, the Koskoff Firm would be entitled to $280,000 in legal fees, and 10% for any amount exceeding $1.2 million.

23. The March 21, 2003 agreement also includes the following provision:

> **if** that statute [§52-251c] is not in effect at the time money is to be distributed to the Client, K K B shall receive fees of twenty-eight percent (28%) of the total recovered.

24. Section 52-251c has been in continuous force and effect since at least 1987 to today. That means at no time was the Koskoff Firm *ever* entitled to anything other than the statutory amount permitted by §52-251c.

25. At some point during the March 21, 2003 meeting Domenic shook Attorney Lichtenstein's hand and said that he appreciated that Koskoff had lowered its rate "but that doesn't mean you're not going do the same job as for other people? You know I am mason, and if I give a lower price I do the same job but I may have to use a little less gravel." Joel laughed, shook Domenic's hand and said "I am going to remember that one, don't worry, we will do the same job."

26. The Koskoff Firm was and is a well-known law firm with a well-regarded reputation. The D'Attilos had no reason to suspect that the Koskoff Respondents could not be trusted. And so, while Cathy and Domenic took care of Danny 24/7 for the next nine years during the course of litigation, the D'Attilos entrusted their case to the Koskoff Respondents.

27. In 2004, the Koskoff Firm was still doing pre-litigation research for the medical malpractice case.

28. In July 2004, Attorney Lichtenstein drafted a letter indicating that the Koskoff Firm was dropping the D'Attilos' medical malpractice case because the Firm had not obtained sufficient medical evidence as of that date. G:6.

29. Also in 2004, Cathy and Domenic moved from a house in Shelton to a ranch house in Norwalk to accommodate Danny's changing needs as he grew older. They lived there until March 2012, abruptly moving from their Norwalk home to a rental in Bethel for reasons related to this grievance as summarized below. See ¶104-155.

JANUARY 2012:

30. After almost having dropped the case in July 2004, the Koskoff Firm reconsidered and filed the medical malpractice complaint in January 2005. This was shortly before the statute of limitations expired.

31. On July 26, 2006, the Koskoff Firm filed an offer of judgment of $4 million to resolve the medical malpractice case. The offer was not accepted by the doctor.

32. In or about November 2008, the D'Attilos were unable to pay their mortgage and foreclosure proceedings were commenced against them.

33. The first medical malpractice trial took place in May 2009, more than four years after the complaint was filed. The jury voted 5 to 1 in favor of the D'Attilos. Because the verdict was not unanimous, the case had to be retried.

34. On May 25, 2011, after the second trial, the new jury returned a unanimous verdict in favor of Cathy, Domenic, and Danny D'Attilo for $8,619,989.13 in economic damages and $50,000,000.00 in noneconomic damages. G:7.

35. The jury's verdict was big news even outside of the legal profession and resulted in significant publicity for the Koskoff Firm and, on information and belief, significant financial benefit to the Firm, attracting many new clients, referrals, and accolades.

36. For example, less than two hours after the verdict, Attorney Kathleen Nastri was giving interviews to the Associated Press and CBS radio. Later that afternoon she had a television press conference with Cathy and Domenic participating. Attorney Nastri told the news media: "The D'Attilos will go home to Danny, but he's still in a wheelchair. He still can't walk, or talk or eat on his own."

37. In contrast, with more than a $100 million still at stake because of prejudgment interest, the doctor's defense attorney told the news media that the decision was a "total miscarriage of justice by the jury" and "vowed to appeal the verdict."

38. As of this writing, the Koskoff Firm features the case on its website homepage, along with an in-depth article about the case, and pictures of Cathy, Domenic, and Danny. *See, e.g., G:8.* (*from www.koskoff.com; the D'Attilos' case is the first one to appear after about five seconds)*

39. For another example, Kathleen Nastri was featured on the cover of New England Super Lawyers 2013, with an article in part about her handling of the D'Attilos' case and her "Walt Disney Approach" to litigation.

40. Though all was well with the Koskoff Firm and its attorneys, at around the same time as the verdict and accompanying publicity, Cathy and Domenic had run out of money providing care 24/7 for Danny, after having faced foreclosure and bankruptcy for several years.

41. In or about August 2011, the Koskoff Firm arranged for the D'Attilos to borrow cash in advance on the verdict at a very high interest rate (nearly 30% annual rate), from a company that specializes in advancing money to litigants. See, e.g. G:9-10.

42. Following a mediation in November 2011, settlement talks progressed significantly. G:11-16. By the end of December 2011 or so, the Koskoff Firm anticipated that there would be a settlement of at least $18 million and likely more. And, in fact, the insurance carrier made a firm offer for $18 million. A settlement would avoid the appeal and resolve all issues. Negotiations continued.

43. On or about January 4, 2012, Kathleen Nastri asked Cathy and Domenic to sign documents that Cathy and Domenic were told were needed for the settlement, without giving any other explanation. They had relied on Kathleen's legal advice and guidance for many years through two trials, and continued to do so now on the eve of settlement. There was no discussion about the Retainer Agreement.

44. One document authorized the Koskoff Firm "to decline the present offer of $18,000,000.00. G:17. That meant that as of January 4, 2012 the D'Attilos were guaranteed a minimum of an $18 million settlement. That also meant the Koskoff Firm knew that a settlement was guaranteed.

45. There was also a settlement authorization dated January 4, 2012 authorizing the Koskoff Firm to settle the case for "$22,500,000.00 present cash value." G:18.

46. Both January 4, 2012 documents indicated "Attorney Fees (28%)", with no explanation, and no reference to the March 21, 2003 Retainer Agreement. The documents were entitled "D'ATTILO V. VISCARELLO. They were not contracts, or amendments to a contract.

47. As can be seen from the actual Retainer Agreement (G:4-5), 28% was *not* the correct number. The D'Attilos were not advised of this at that time (or at any other time). There was no mention of the 2003 Retainer Agreement. There was no mention of §52-251c in the January 2012 documents and neither has the statutory waiver. In fact, Nastri said nothing about these documents or the 28% other than the documents were related to the upcoming settlement and that the D'Attilos should sign them. Cathy and Domenic trusted their attorneys and signed the documents.

48. On January 9, 2012, Cathy received a phone call from Kathleen Nastri, who asked the D'Attilos to come to the Koskoff office that day to discuss the status of the settlement. The doctor's insurance company was sending in a negotiator and it was very likely that a final multi-million dollar settlement in excess of $18 million would be signed in the next day or two.

49. Although the 2003 Retainer Agreement did not have any expiration date (G:4-5), Nastri falsely told Cathy in that phone conversation that the 2003 Retainer Agreement had expired and that Cathy and Domenic needed to come in immediately to sign a new retainer agreement, otherwise the Koskoff Firm would not be able to finalize a settlement with the insurance company. Nastri said that the contingency fee for the new agreement would be 33⅓ percent. The D'Attilos had not seen the Retainer Agreement since 2003 and they no longer had a copy.

50. Kathleen Nastri's phone call and comment came out of the blue. This was the first time the Retainer Agreement had been mentioned by anyone from the Koskoff Firm since March 21, 2003, nearly nine years earlier, even though there had been two trials, a mediation, negotiations, and the Koskoff Firm assisting Cathy and Domenic to borrow funds through a cash advance at an almost 30% annual interest rate.

51. Domenic was in the room with Cathy when she received the call from Kathleen Nastri. Cathy told Kathleen what had happened in 2003, how the friend of the family negotiated a lower contingency fee. She also recounted Cathy and Domenic's meeting with Joel Lichtenstein to sign the agreement. (Kathleen joined the Koskoff firm in July 2003, so she was not originally on the case and the D'Attilos thought she may not have known what had happened.)

52. Kathleen said that she did not know how the Koskoff Firm would be able to negotiate without a new agreement, but Cathy (with Domenic in the background) insisted they were not going to sign a new retainer agreement but that they were going to be available by the phone to come in at any time to conclude an agreement with the insurance company.

53. Cathy (with Domenic agreeing in the background) told Attorney Nastri that her request was "crazy".

54. Nastri replied: "Well, Mike Koskoff won't be happy, but I will relay the message."

55. Cathy and Domenic vaguely remembered that 28% was somehow a part of the Agreement that they had not seen in nine years. The D'Attilos did not remember or realize that the Agreement was based on a Connecticut law which strictly limited the contingency fee to a specific formula. As they spoke, Kathleen affirmatively represented or agreed with Cathy and Domenic that 28% was the contingency percentage of the Retainer Agreement that Kathleen falsely claimed had expired. Kathleen did not inform Domenic and Cathy that their memory was incorrect, because the 28% only would have applied if §52-251c was no longer in force. Domenic and Cathy were not lawyers but Kathleen Nastri was, and she said nothing to her clients although she had an absolute responsibility to do so.

56. Instead, Kathleen Nastri had attempted, also unethically, to convince her clients to sign a new retainer agreement for 33⅓ percent contingency fee only two days before a formal settlement agreement was signed. The D'Attilos refused based on their incorrect understanding fraudulently encouraged by Nastri that the "correct" amount was actually 28%.

57. If Attorney Nastri had been successful in convincing her clients to sign a new retainer agreement in January 2012 for 33⅓ percent, this would have resulted in an unethical and voidable increase of legal fees for the Koskoff Respondents from $2,660,000 (the amount they were then entitled to "pursuant to law") to $8,333,333.

58. However, Nastri's January 9, 2012 attempt to defraud the Complainants out of nearly an extra $5.7 million was only the tip of the iceberg of what went on for the next four months, and only at the beginning stages of what turned out to be a successful civil conspiracy between the Koskoff Firm and Day Pitney to defraud the D'Attilos out of millions of dollars.

59. Two days later, on the afternoon of January 11, 2012, Domenic D'Attilo received a phone call from Michael Koskoff. That was the first time Cathy or Domenic had ever talked with Attorney Koskoff since they had become clients of the Koskoff Firm in 2003.

60. It was a very brief conversation. Michael Koskoff asked Domenic: "Who are the best lawyers in the country?"

61. Domenic responded: "Well, I hope you are."

62. Michael Koskoff said: "How does $25 million sound?"

63. Domenic replied: "It sounds like we need to come in to sign some documents."

64. There was no mention of the Retainer Agreement.

65. Cathy and Domenic went to the Koskoff office that afternoon, and, following the legal advice and direction of their long-time attorneys, initialed each page, and signed the medical malpractice settlement with the doctor's carrier ("Med-Mal Agreement", G:19-20).

66. At the moment that the Med-Mal Agreement was signed for a sum certain, the Koskoff Firm was obligated, pursuant to §52-251c as incorporated by the 2003 Agreement, to pay Cathy, Domenic, and Danny their share calculated to the exact penny.

67. At the same time they signed the Med-Mal Agreement, the D'Attilos were also instructed to sign the Application to Compromise (G:22) and a settlement authorization/summary statement of costs prepared by the Koskoff Firm, which outlined the settlement amount and deductions for fees and costs that the Firm represented it was entitled to ("Settlement Cost Statement"). G:23a. (Color copy of original, G:23b).

68. The January 11, 2012 settlement authorization, entitled "D'ATTILO V. VISCARELLO", also incorrectly and misleadingly listed "Attorney Fees (28%).

69. The Koskoff Respondents said nothing to the D'Attilos about the 2003 Retainer Agreement at the January 11 settlement signing, and did not ask Cathy and Domenic to sign a new retainer.

70. As far as the D'Attilos were concerned, the Retainer Agreement was a non-issue and they never heard about it again from anyone at Koskoff.

71. On or about January 12, 2012, the Koskoff Firm submitted the "Application to Compromise Doubtful and Disputed Claim or Action" to the Norwalk Probate Court and an Application to appoint the D'Attilos as guardians of Danny's estate. G:21-22).

72. The Application to Compromise, which is a public record, states in part (G:22):

> [The medical malpractice defendants] are willing to settle the lawsuit in the amount of $25,000,000.00, with an approximate net to the estate of $13,000,000.00, which amount will be invested in a structured settlement and a minor's trust, the details of which will be provided to the Probate Court as soon as the specifics of the trust are finalized.

73. The Koskoff Firm also submitted to the Probate Court the Settlement Cost Statement dated January 11, 2012. G:23. This also is a public record.

74. That calculations submitted to the Norwalk Probate Court were based on deducting 28% for contingency fees.

75. This was intentionally fraudulent, specifically aimed to deceive the D'Attilos and the Court (neither of which had a copy of the retainer agreement). The Firm did not submit the March 2003 retainer agreement to the Norwalk Probate Court to justify or explain its fees.

76. The Koskoff Respondents were *never* entitled to 28%. Section 52-251c has been in force since at least 1987 and remains in force today.

77. The Koskoff Firm has likely handled hundreds, if not thousands, of contingency fee cases governed by §52-251c since 1987. By filing that application on January 12, 2012 seeking fees in excess

of those permitted by the statute, the Koskoff Respondents violated Conn. Gen. Stat. §52-251c(g), among other things.

78. That provision, added in 2005, applies to "causes of action" that arose after that section was added to §52-251c, and was in force on January 12, 2012, the first date that the Koskoff Firm officially filed court papers seeking payment of legal fees to which the Firm was not legally or ethically entitled.

79. On January 26, 2012, the Probate Court judge, the Hon. Anthony J. DePanfilis, appointed attorney Colleen D. Fries, Esq. to be Guardian Ad Litem ("GAL") for Danny, a "minor who has an interest in said matter." G:24.

80. A Probate Court hearing was set for February 29, 2012. Kathleen Nastri of the Koskoff Firm was listed as the attorney representing Domenic and Cathy D'Attilo. G:25. Danny was going to be represented by Colleen Fries, an attorney very familiar with Connecticut personal injury contingency fee agreements and more than twenty years of experience.

FEBRUARY 2012:

81. Throughout this period, the Koskoff Respondents continued to represent and advise Cathy and Domenic D'Attilo.

82. Cathy and Domenic first met Attorney and co-Respondent Brad Gallant of Day Pitney LLP on February 1, 2012 at the office of the Koskoff Firm, one day before Danny's ninth birthday. Attorney Gallant had previously worked with the Koskoff Firm on at least one other case in or about 2009.

83. During this meeting, Gallant and the Koskoff attorneys discussed financial, trust, and structure options.

84. Kathleen Nastri and Brad Gallant also expressed significant concerns about the fact that a Guardian Ad Litem had been appointed and about the Norwalk Probate Court and its judge. The attorneys were in agreement that Colleen Fries was a huge problem, and she would make life very difficult for Cathy and Domenic.

85. Brad Gallant said that the judge was difficult to work with, that the D'Attilos would have to go to Probate Court for everything, and that getting something approved would be a nightmare.

86. Nothing was resolved at the meeting, but Cathy and Domenic were very concerned about what they had heard. Among other things, after having lived through two medical malpractice trials and litigation that had taken nine years to resolve, while also taking care of Danny 24/7, they did not understand why things were going to be difficult now.

87. On February 9, 2012, Kathleen Nastri and Colleen Fries had a "long talk." Nastri wrote a follow-up email to Attorney Fries, stating in part: "Nice talking to you today. I'm glad you are going to be involved in the case." G:26.

88. Kathleen Nastri sent an email to Brad Gallant, enclosing a copy of the email she had sent to Colleen Fries just a couple of minutes earlier (G:26):

> FYI. [Colleen Fries and I] had a long talk. I tried to answer some of her questions. **She wants the complaint, fee agreement, costs, etc.** She knows (because I told her) that you are involved.

89. Gallant replied to Nastri: "I better have all those documents too please." G:26.

90. On February 10, 2012, Domenic and Cathy D'Attilo signed a Retainer Agreement retaining Day Pitney, with Brad Gallant as their primary attorney from that firm. G:27-28. There was no notice in the Retainer Agreement about a possible conflict of interest though it was for joint representation on issues related to the settlement, creating a trust for Danny, and submitting the settlement to the Probate Court.

91. That Retainer Agreement did not put the D'Attilos on notice that because they were both being represented by the same attorney for issues having to do with Danny, it was at least possible a conflict of interest could arise. The Agreement also did not set forth any procedure for what would happen if such a conflict arose. (The Koskoff Retainer Agreement for March 21, 2003 had also failed to provide any notice to the D'Attilos regarding possible conflicts.)

92. The Koskoff Firm continued to represent the D'Attilos in the probate process. For example, on February 13, 2012, Gallant filed an appearance in Probate Court for Cathy and Domenic "in addition to other appearances on file." G:29.

93. On February 15, 2012, Koskoff Firm paralegal Barbara Larocca sent Colleen Fries three documents in an email (G:30): the March 21, 2003 Retainer Agreement (G:31-32), the current medical malpractice complaint, and a listing of purported lawsuit costs as of December 16, 2011 (G:33). The Koskoff Firm did *not* include a copy of the January 11, 2012 Settlement Cost Statement which mentioned "Attorney Fees (28%) and how the proceeds were to be allocated. The "LAWSUIT COSTS – as of 12/1611" summary that was included mentioned nothing about attorney fees or allocation. G:33.

94. Four minutes later, Ms. Larocca forwarded the email and the attached documents to Jim Horwitz, Kathleen Nastri, and, as requested, Brad Gallant. G:30. As noted, the March 21, 2003 Retainer Agreement had the following provision on the first page, duplicated here (G:4-5):

> II. **FEES** - Pursuant to statute, K K & B shall receive fees of 33 1/3% of the first $300,000.00, 25% of the next $300,000.00, 20% of the next $300,000.00, 15% of the next $300,000.00, and 10% of any amount in excess of $1,200,000.00 of the total recovered, whether by way of settlement or award, before deduction of liens, costs and expenses. If that statute is not in effect at the time money is to be distributed to the Client, K K & B shall receive fees of twenty-eight percent (28%) of the total recovered. The Client authorizes K K & B to deduct said fees, liens, costs and expenses out of monies received from said party or parties. If all or any part of the settlement or award is to be paid in installments (a "structured settlement") the fee shall be based upon the present cost of such settlement or award; all fees, liens, costs and expenses shall be paid from the first monies received.
>
> It is agreed that this employment is on a contingent fee basis. If no recovery is made, the Client shall not owe K K & B any sum as attorneys' fees or repayment of costs.

95. Ms. Larocca's email, sent to Colleen Fries and Brad Gallant at about 11 AM on February 15, 2012 in response to Attorney Fries' request for a copy of the D'Attilos' Retainer Agreement with the Koskoff Firm, establishes, among other things:

- The March 21, 2003 Retainer Agreement was the one and only agreement in force at the time of the January 11, 2012 settlement. It had not been modified or amended in any way and at any time.

- Kathleen Nastri lied to the D'Attilos on January 9, 2012 when Nastri claimed that the March 21, 2003 Retainer Agreement had expired.

- The Koskoff Respondents defrauded the D'Attilos by having them sign *any* Settlement Cost Statement or any other document indicating a 28% calculation for legal fees, which was in direct conflict with §52-251c, the statute incorporated by reference in the March 21, 2003 Retainer Agreement signed by the Koskoff Firm and Cathy and Domenic D'Attilo.

96. The Koskoff Firm did not send the D'Attilos copy of the email they sent to attorneys Fries and Gallant, or the attachments. The D'Attilos only learned about this in July 2014.

97. After Ms. Larocca forwarded the email, Kathleen Nastri asked Ms. Larocca the following question (G:34):

> did you ask Bill [Bloss] or Jim [Horwitz] before you sent the retainer? **I think they both had some concerns**, but recognized we would need to send it.

98. Why would any attorney ever have even the slightest concern about showing a court-appointed Guardian Ad Litem that attorney's Retainer Agreement for a minor child?

99. And why did the Koskoff Firm fail to turn over to Fries the January 11, 2012 Settlement Cost Statement (G:23) that listed attorney fees as $7 million based on 28%, and an 80/20% allocation between Danny and his parents?

100. As it turns out, Colleen Fries was an attorney who handled personal injury matters and contingency fee agreements. G:35. She would know that §52-251c had been in force continuously since at least 1987 and had never been repealed. Colleen Fries was even a member of a committee on litigation management that previously had been known as the "Council on Ethical Billing."

101. Any attorney reviewing the Retainer Agreement, let alone a court appointed GAL, would immediately see that the Koskoff Firm was *never* entitled to a 28% contingency fee of $7 million. The GAL would correctly calculate the exact and only amount of fees the Koskoff Firm would have been entitled to (and then, only if the Firm had not violated §52-251c(g)): **$2,660,000**.

102. Colleen Fries would also figure out that the Application to Compromise and the signed Settlement Cost Statement filed with the Norwalk Probate Court significantly misstated the amount of money due to the Koskoff Firm.

103. The Probate Court hearing was less than two weeks away. The Guardian Ad Litem now had a copy of the March 21, 2003 Retainer Agreement, the one and only Retainer Agreement from the Koskoff Firm ever signed by the D'Attilos. G:31-32.

104. Attorney Fries was the court appointed lawyer supposed to be looking out for Danny's best interests and she was slated to prepare and file "a report on the application to compromise". G:36. Now that she received a copy of the March 21 2003 Agreement, she would have to review it as part of her report and analyze the settlement to make sure that her client, Danny, received everything to which he was entitled. To do that, she would have to calculate the legal fees that Danny and his parents would have to pay. The problem for the Koskoff Firm is that there was one and only one correct calculation:

- The first $1,200,000 of the settlement permitted a maximum of $280,000 in legal fees for the Koskoff Firm.

- The remaining settlement amount subject to a 10% contingency fee as per the March 21, 2003 Retainer Agreement and §52-251c was $23,800,000. 10% of that was $2,380,000.

- Therefore, the total maximum legal fees that the Koskoff Firm was entitled to only if it complied with §52-251c was **$280,000 + $2,380,000 = $2,660,000**

105. Attorney Fries had both the March 21, 2003 Retainer Agreement and the Application to Compromise (G:22, 31-32, 170). Yet, she had not contacted the Koskoff Firm to question the numbers. She had not even contacted the D'Attilos to talk to them about her nearly nine year old and disabled client Danny. Was it possible Fries had not looked at the documents that she had specifically asked to see even though the Probate hearing was less than two weeks away?

106. If Fries knew nothing, the Koskoff Firm's only possible hope for walking away with millions of dollars in misappropriated legal fees would be to have §52-251c repealed or to get rid of Fries as soon as possible by arranging for her to no longer to be the Guardian Ad Litem and then, somehow, preventing another GAL from being appointed.

107. However, the legislature was not going to repeal a law that had been in effect since at least 1987 specifically designed to protect clients from overreaching attorneys. And Norwalk Probate Court Judge DePanfilis had already appointed Fries as the GAL

108. Immediately after Colleen Fries requested and received the March 21, 2003 Retainer Agreement, and with time running out, the Respondents began to ratchet up the pressure to scare Cathy and Domenic into moving out of Norwalk within the next two weeks to a different jurisdiction that Respondents knew would likely not appoint a GAL.

109. At this point, Brad Gallant took the lead.

110. For example, on February 16, 2012, one day after Colleen Fries and Brad Gallant both had received a copy of the March 21 2003 Retainer Agreement (G:30-31), Cathy and Domenic met with Brad Gallant at his New Haven office to discuss Trust issues.

111. Brad Gallant mentioned nothing to them about the email to Colleen Fries, or the March 21, 2003 Retainer Agreement that he had received just the day before at his request.

112. After Trust issues were discussed, Gallant made some idle chit chat, and asked about Danny. He then proceeded to focus again on jurisdiction issues-- the purported horrors of the Norwalk Probate Court and Colleen Fries as a Guardian Ad Litem that he and the other attorneys had raised at the February 1, 2012 meeting.

113. Cathy and Domenic were again told, among other things, that Colleen Fries would have to approve everything they did, they would experience nothing but problems from the Norwalk judge, they would never be able to get out of the jurisdiction of the Norwalk Court even if they moved out of state, and that their lives would be an ongoing nightmare.

114. The D'Attilos were independent, straight-forward, caring, loving, proud, and hardworking parents who had worked all their adult lives to afford a home in which they could raise a family. They also had spent years dealing with fertility issues because of their deep desire to have children. Danny was perfectly healthy until the day he was delivered. After Danny was born, injured for life but fully capable of loving and being loved, Cathy and Dom loved him unconditionally, and sacrificed everything within their power to care for Danny. They continue to do so to this day and they will always be there for Danny as long as they are alive.

115. The possibility of the GAL and the Norwalk Probate Court turning their lives into a never-ending nightmare went against everything they had worked for and believed in. They also feared for Danny's safety and well-being when they were no longer here and they could no longer nurture and protect him.

116. The D'Attilos were already stressed by all the decisions they had to make, their attorneys' repeated comments disparaging Norwalk Probate Court and the GAL over the previous couple of weeks, and the publicity. They offhandedly mentioned to Brad Gallant that they had gotten some anonymous phone calls and sometimes people coming to their house uninvited.

117. Gallant looked at them for a second, jumped up from his chair, and told them that this was a perfect cover to move out of Norwalk Probate Court, that they should move immediately, and that the move would significantly improve Danny's future.

118. The D'Attilos spoke with Kathleen Nastri. She reiterated what she had previously said about Norwalk, and that she thought Brad's advice was a great idea and the Koskoff Firm was okay with additional delays in getting their fees because the Koskoff Firm wanted to "get it done right."

119. Following the urgent advice of their attorneys, the D'Attilos immediately contacted a real estate agent that they had known for many years. They explained the urgency, that they had been advised to find a place to move no later than February 28, 2012, and that they were instructed to do so by their

attorneys because of problems with the judge. Sensing the urgency, the real estate agent adjusted his schedule and made finding a place for them his top priority.

120. It turned out the Respondents not only wanted Cathy and Domenic to move out of their Norwalk home where they had been living since 2004, they wanted the D'Attilos to move only to very specific places.

121. For example, given the urgency communicated to Cathy and Domenic, they put together an offer around February 20, 2012 or so for a house in Shelton (a town they previously lived in) that would have been close to perfect for Danny. They knew the owner who, coincidentally, had sold them their first starter home and also would have been able to arrange to rent the house or an option to buy.

122. When informed of the offer, their attorneys vetoed the idea, and told the D'Attilos that Shelton was another jurisdiction they needed to avoid and that the Probate Court would never approve the expenditure of funds in time.

123. Though they were very disappointed, the D'Attilos were following their attorneys' advice to "get out of town" in order to "establish appropriate jurisdiction" in an attorney approved Probate Court pursuant to a "fully coordinated strategy."

124. Just before the deadline that they were given to find a place to move to, and with no more time to look, they found a less than ideal place in Bethel, one of the few towns approved by the Respondents. G:37-43.

125. Since the D'Attilos did not have any credit (given the foreclosure proceedings and other debts), Attorney Nastri, with the help of Brad Gallant, wrote a letter to the real estate agent (prior to any court approval) confirming the D'Attilos would shortly be receiving the proceeds of a "significant lawsuit" so the Bethel house could be rented. G:44-45. Of course, that same letter could have and should have been written for the house in Shelton, but their attorneys never mentioned that to Cathy and Domenic.

126. The Respondents were not taking any chances. On February 24, 2012, although the D'Attilos had not yet signed the Bethel lease, Kathleen Nastri faxed a letter to Norwalk Probate Court with copies to Colleen Fries and Brad Gallant withdrawing the Applications, as well as canceling the hearing scheduled for February 29, 2012. G:46.

127. If the hearing had not been canceled, the D'Attilos' attorneys could have alerted the Probate Court to any actual need to move immediately and their attorneys could have sought approval for purchase or rental. However, such a hearing would have raised questions such as: "What's the rush?" or "What's wrong with Shelton?" And, the GAL would have been there. With the March 21, 2003 Agreement in hand.

128. Nastri's fax did provoke a reaction from the Court and the GAL. As Kathleen Nastri immediately reported to Brad Gallant and Jim Horwitz on February 24, 2012 (G:47):

> Just got a call from Diane at Norwalk Probate. She asked why the applications were being withdrawn. I told her many reasons...trust documents not complete, clients hadn't decided on structure yet, they were contemplating not remaining in Norwalk due to concerns relating to general knowledge about the size of the verdict, etc. she said she would let the judge know. As I was typing this email, Colleen called. I told her the same thing. She asked whether it would ever be refiled, I said I didn't know. **She was perfectly calm and pleasant. <u>So far, so good</u>...**

129. Nastri significantly misled the Probate Clerk (who told Nastri she was going to pass the information on to Judge DePanfilis) by telling the Clerk and the GAL on February 24, 2012 that the D'Attilos were "contemplating not remaining in Norwalk." G:47.

130. In fact, by the time of Nastri's conversations with the Clerk and the GAL, the D'Attilos had already decided to purchase the house in Shelton. After Shelton had been vetoed by Nastri and the other attorneys, the D'Attilos then found the place in Bethel, one of the few Probate Court jurisdictions approved by the attorneys.

131. The attorneys not only knew that the D'Attilos had been intensely searching for a house, Nastri knew the day before she spoke with the Clerk and the GAL that the D'Attilos had already found the place in Bethel.

132. For example, on February 23, 2012 at 4:48 PM, Nastri wrote to Gallant: "Looks like they found something in Bethel. $3300/month. One-year lease. They will know if they get it tomorrow. File a letter with Probate tomorrow?" G:48.

133. In reply, at 6:08 PM on February 23, Gallant wrote to Nastri: "Yes but not til we know for sure. They need a letter for the realtor, too." G:48.

134. What possible motive would Nastri have to lie to the Court Clerk and the GAL by failing to tell them that the D'Attilos not only decided to move, but found a place in Bethel? For one thing, disclosing this information would have permitted the Norwalk Probate Court to communicate with the Bethel Probate Court, letting it know, for example, that a GAL been appointed.

135. Brad Gallant also knew that the D'Attilos were doing far more than contemplating a move out of Norwalk, and that they had already found a place in Bethel. He had already discussed with Nastri writing a letter to help the D'Attilos rent despite their credit rating. G:48.

136. Was Brad Gallant outraged that Kathleen Nastri, an officer of the court, had deceived the Clerk, the GAL, and through them, Judge DePanfilis? Gallant's reaction to Kathleen Nastri's news?:

> "**indeed-- sounds like you handled both callers exactly right….<u>Onward</u>**." (G:47).

137. And why would Nastri feel the need to tell Gallant that Colleen Fries was "perfectly calm and pleasant"? According to Nastri's February 9, 2012 email, Nastri's conversation with Fries had been "nice." Nastri had also written to Fries that she was glad that Fries "was going to be involved in the case." G:26.

138. The obvious answer is that it would be a very reasonable guilty reaction for Nastri and Gallant to fear that any attorney reading the March 21, 2003 Retainer Agreement and the Settlement Cost Statement would know immediately that it was likely that something potentially improper, illegal, unethical, and criminal was in the process of taking place.

139. A stressed and unpleasant reaction likely understates what a court appointed GAL charged with protecting Danny's interest might do upon discovering this fact.

140. Luckily for the Respondents, but not for Cathy, Domenic, and Danny, Colleen Fries was "perfectly calm and pleasant." Not even a hint of suspicion.

141. Also notable and lucky, as confirmed by her email, neither the GAL nor the Clerk had said anything to Nastri about the March 21, 2003 Retainer Agreement. G:47. No questions asked. Nothing said about renting a house in Bethel. "So far, so good…"

142. Kathleen Nastri had handled both callers "exactly right". Nastri and Gallant also now knew that Colleen Fries was neutralized and "perfectly calm and pleasant" about it as well.

143. As it turns out, the Respondents did not have much to worry about.

144. In August 2014, Colleen Fries confirmed that she "did not perform any services as guardian ad litem before the case was withdrawn from the Norwalk Probate Court" as a result of receiving the February 24, 2012 letter from Nastri. G:36. When asked to provide a copy of her file, Fries first replied: "I never did anything as guardian, so I have nothing to give you." G:49. *But see* G:172-173, 22, 24, 46.

145. Meanwhile, after the GAL closed her file on the case, Cathy signed a lease on February 27, 2012 to rent the house in Bethel for $3,400 a month, plus pay a $6,800 deposit, without Probate Court knowledge or approval, and with only the letter from Kathleen Nastri as credit. G:44-45.

146. In fact, the attorneys had handled the D'Attilos "exactly right" as well. Cathy and Dom had been so scared by their attorneys into moving out of Norwalk ASAP from their home of eight years, they actually felt it necessary to outbid another potential renter to get the place in Bethel (so they ended up paying $3,400 per month rather than the $3,300 per month rent asking price).

147. On February 29, 2012, the same date that the Norwalk Probate Court hearing was supposed to have taken place before it was canceled by the Respondents, there was instead a meeting between Kathleen Nastri, Domenic and Cathy D'Attilo, Jim Horwitz, Brad Gallant, and Rebecca Iannantuoni regarding issues "for Cathy and Don [sic] to address A.S.A.P." G:50.

148. What items required the immediate attention of four attorneys who had a combined total experience of 100 years practicing law in Connecticut (Gallant 34 years), (Horwitz 28 years), (Nastri 26 years), (Iannantuoni 12 years)? The Respondents wanted to make sure the D'Attilos eradicated all official connections to Norwalk "A.S.A.P" such as "Registrar of Vote …. Registration of car/DMV …. Telephone electrical cable etc. [and] Post office - change of address." G:50.

149. The harmful nature of what the Respondents did to convince the Complainants to move to avoid the jurisdiction of the Norwalk Probate Court (in order to profit the Respondents) is underscored by what occurred during the medical malpractice trial.

150. As noted above in ¶6, the Koskoff Respondents had written about one of the central goals for Cathy and Domenic: "Danny's parents intend to keep him home and care for him so long as they are alive."

151. A plan to modify or build a home for Danny had been presented to the jury during the medical malpractice trial.

152. The expert hired by the Koskoff Firm, someone they had used 65 times before in other cases, visited the D'Attilos house in Norwalk (the one they purchased in 2004) and testified at trial that the house was "lovely", but that the house did not have the ability to be expanded when Danny was older, so a different house would be needed at that point. G:51-54.

153. Koskoff's expert testified that as of May 2011 "it's not as much of a problem [now]" but it would be "as [Danny] gets bigger." G:54.

154. In other words, the "lovely" Norwalk house that the Respondents had the D'Attilos abruptly move from was perfectly acceptable for Danny at the time, and a new house with special features specifically designed for Danny's future lifetime needs (or a larger pre-existing house that would be renovated) would only have to be obtained eventually. There was no testimony by this or any other expert that the D'Attilos needed to disrupt their lives and urgently move from the "lovely" Norwalk home that they had lived in since 2004.

MARCH AND APRIL 2012:

155. In early March 2012, following the dire warnings and explicit instruction of their attorneys, Cathy and Domenic got brand new drivers' licenses and moved to Bethel. It was official. Judge DePanfilis did not have jurisdiction, and Colleen Fries was off the case. As Kathleen Nastri had written to Brad Gallant: "So far, so good…"

156. However, there had been one other hurdle along the way for the Respondents.

157. The D'Attilos had no way of knowing that three weeks earlier, on February 16, 2012, a second potential problem arose that might complicate or even undo the Respondents' plan to defraud the D'Attilos out of millions of dollars.

158. On or about January 3, 2012, the Koskoff Firm had hired a well-regarded tax attorney from California, Robert W. Wood, Esq., to provide advice at the rate of $750 per hour "with respect to the federal income tax consequences of the anticipated resolution of the case" and to review a draft of any agreement with the insurance carrier prior to its signing.

159. On February 16, 2012, one day after Fries and Gallant received the 2003 Retainer Agreement, Wood provided the Koskoff Firm with a detailed Memorandum stating that Wood was "surprised to

receive the signed General Release and Settlement agreement" on January 25, 2012, given that he had been hired to review a draft settlement agreement so he could comment on it *before* it was finalized. G:55.

160. Wood wrote to the Koskoff Respondents: "for a variety of reasons noted below, I believe this [Med-Mal] Settlement Agreement should be abrogated and a new one should be drafted." Attorney Wood also wrote "I expect others in your office are interested in this [Memorandum] and that Mr. and Mrs. D'Attilo will be too. Please feel free to pass this along as appropriate."

161. The Koskoff Firm never advised their clients, the D'Attilos, that the Med-Mal Agreement that the Koskoff Firm had drafted and advised them to sign did not properly address certain issues. In fact, the Koskoff Firm never told Cathy, Domenic, the GAL, or the Probate Court about Wood's Memorandum, or what Wood had been working on, despite their duty to inform.

162. Why not pass this important information along?....because the last thing that the Koskoff Firm wanted to do was to abrogate or amend the Med-Mal Agreement though it was in the D'Attilos' interest that this be done. Any attempt to do so likely would have resulted in the very Probate Court scrutiny that the Respondents were going out of their way to avoid.

163. And, as further evidence of her lack of candor with the Court and the GAL, Nastri's February 24, 2012 email above (G:47) also confirms that she mentioned nothing to either the now former GAL or the Probate Court Clerk about this potential critical problem with the Med-Mal Agreement or the urgent need to abrogate, amend or rescind it.

164. And what about a new GAL being appointed? To minimize the chance that the Bethel Probate Court would appoint a new Guardian Ad Litem to oversee the distribution of millions of dollars to a disabled child who was unable to speak for himself and never would be able to do so absent a medical miracle, the Respondents planned to have "the Court appoint[] Kathleen [Nastri] as Attorney for the Minor Child". G:56.

165. With Nastri as Danny's attorney, the Respondents would not have to worry about any inconvenient inquiries or the 2003 Retainer falling into the wrong hands a second time.

166. Leaving nothing to chance, on April 9, 2012, Nastri simply filed an appearance for Danny and did not bother waiting for an appointment by the Hon. Judge Joseph A. Egan, Jr. of the Bethel Probate Court. G:57-58.

167. The Respondents worked together to file a new Application to Compromise and a new, unsigned Settlement Cost Statement to the Bethel Probate Court. For example, on March 29, 2012 there was an email exchange between Gallant, Nastri, and Horwitz. As part of the email exchange, Attorney Horwitz wrote:

> Sounds great. Looks like we are past the end of the beginning and near the beginning of the end. I just want to make sure that with the filing the application to compromise tomorrow, that there will be nothing else that will derail the approval of the settlement. That should put us on course for approval within 30 days or so? G:59.

168. Of course, the only thing that had "derailed" approval was the advice and urging that the D'Attilos "get out of town" to avoid the Norwalk Probate Court and the hearing scheduled for February 29, 2012.

169. Brad Gallant replied to Jim Horwitz:

> Yes indeed it should. Barbara [Larocca, a Koskoff paralegal] and I have just finished discussing the Settlement [Cost] Statement which, after I review again, I will review run by you for approval before we finalize. It may be that the best way to handle is for me to go see Cathy and Domenic again over the weekend to get this all signed and then to file on Monday but that is an issue I will resolve with them…." G:59.

170. In reality, Brad Gallant had worked hand-in-hand with the Koskoff Firm to prepare the updated Settlement Cost Statement. G:59-60.

171. In or about June 2014, Day Pitney turned over to the Complainants 5250 pages of paper documents for copying which included documents establishing that the Day Pitney Respondents were fully aware that the March 21, 2003 Retainer Agreement controlled the amount of legal fees, and that the Koskoff Firm was not entitled to 28% as per any agreement. See, e.g., G:30-33, 61-69, 70-71.

172. Meanwhile, Brad Gallant was also looking out for the financial interests of Day Pitney. On April 2, 2012, Brad Gallant informed Cathy and Domenic that in return for Brad Gallant serving as Trustee for Danny's trust fund Day Pitney would charge "at the annual rate of .5% (one half of one percent) of trust assets." G:72.

173. That meant Day Pitney would initially get approximately $64,000 per year in legal fees to oversee Danny's trust with about $12.8 million in assets. However, "Typical legal services (such as, e.g., handling a real estate closing or defending or making a claim on behalf of the Trust)" were not included. G:72.

174. This clause for additional legal fees would prove to be very profitable for Day Pitney with the firm later charging Danny many times the going rate for a real estate closing. For another example, Day Pitney charged what subsequent estate attorneys called "outrageous" and "unethical" fees to prepare Wills and related papers and a "sleazy" attempt to get paid for Trust work that Gallant would not be doing. ¶248-250, 342.

175. Gallant's April 2, 2012 letter regarding Trustee fees (G:72) again had no warning to the D'Attilos of possible conflicts of interest between Gallant's role as a Trustee at the same time he was still representing Domenic and Cathy. And, once again, there was no advice for them to seek independent counsel.

176. That same day, April 2, 2012, Gallant sent various papers to the Bethel Probate Court. *See, e.g.* G:73-77.

177. In the Application to Compromise, which is a public record, Gallant stated that he attached a "copy of the [draft] Settlement [Cost] Statement prepared by Koskoff, Koskoff & Bieder, P.C." G:74, 76-77.

178. Gallant's representation to Judge Egan that the Koskoff Firm had prepared the Settlement Cost Statement was misleading, at best.

179. As noted, Day Pitney was fully involved in the preparation of the Statement Cost Statement. Copies of the cover letter and documents sent to the Probate Court on April 2, 2012 were also cc'd to Kathleen Nastri and Jim Horwitz (G:73), but Nastri and Horwitz said nothing to the Probate Court about Gallant's misrepresentation either.

180. Bethel Probate Court Judge Egan held a hearing on April 24, 2012. Cathy and Domenic were "represented" by Brad Gallant (who was also set to become the Trustee of Danny's revocable Trust), Kathleen Nastri was supposed to "represent" Danny, and Jim Horwitz was representing the Koskoff Firm. G:78-79.

181. For some reason, Nastri did not appear. Horwitz ended up "representing" Danny at the hearing, as well as representing the Koskoff Firm. G:80.

182. The D'Attilos had no idea that, in essence, they were not being represented by any attorney at the hearing since all of the attorneys in the room had conflicts or potential conflicts of interest that were not disclosed to them.

183. At the hearing, Judge Egan appointed Cathy and Domenic the guardians of Danny's estate G:81.

184. According to the terms of the Trust drafted by Brad Gallant, their being guardians of the estate would give Cathy and Domenic the right to revoke the Trust at any time. G:82-88, G:84.

185. As reflected in the public record, Judge Egan granted the Application to Compromise "for the sum of $25 million, with an approximate net to the guardianship estate of Daniel Jacob D'Attilo of $12,823,395.00 in cash" (G:89) based on the unsigned and undated draft Settlement Cost Statement (G:76-77) prepared by the Koskoff Respondents and Day Pitney Respondents, as well as the Application to Compromise. G:74-75.

186. Judge Egan also approved the appointment of Brad Gallant as the trustee. G:90.

187. Judge Egan did not appoint a Guardian Ad Litem. Again, in the words of Kathleen Nastri: "So far, so good…"

188. Despite their fiduciary duty to do so, Respondents never informed Judge Egan about Robert Wood's (the tax attorney) February 16, 2012 Memorandum and the significant negative impact the settlement might have on the D'Attilos, including Danny.

189. On April 25, 2012, Brad Gallant, now simultaneously attorney for Cathy and Domenic D'Attilo as well as the sole Trustee of Danny's $12.8 million, wrote to Judge Egan correcting "minor errors" to submitted documents and also included a "corrected" Settlement Cost Statement (now without any reference to a structured settlement). *See, e.g.*, G:91-92.

190. Significantly, Brad Gallant did not submit any correction to the deduction of $7 million in attorney fees based on the illegal deduction for a 28% percent contingency fee, despite the fact that the March 21, 2003 Retainer Agreement and state statute only authorized contingency fees of $2,660,000.

191. There was no correction because the Settlement Cost Statement numbers were no mistake…after months of careful planning and lucky breaks, it was the deliberate misappropriation of millions of dollars out of trust funds that were the sole property of Cathy, Domenic, and Danny D'Attilo.

192. On May 4, 2012, Brad Gallant had Cathy and Domenic sign a second Retainer Agreement with Day Pitney for joint representation, this time for "estate planning" and to create a placeholder Foundation for future use. G:93-94.

193. Again, just as with the first Retainer Agreement (which was still in force), there was no warning about potential conflicts of interest or advice to seek independent counsel.

194. Instead, that very same day, Attorney Gallant had his clients, Cathy and Domenic, execute a document creating a Foundation naming "KEITH BRADOC GALLANT" as sole Trustee. G:95-105.

195. Though the Retainer Agreement is on Day Pitney letterhead (G:93), Day Pitney is not mentioned in the final Foundation documents, only "Keith Bradoc Gallant."

196. Among other things, the Foundation created that day by Attorney Gallant naming himself as sole Trustee for future funding as per the terms of the Foundation, stated in part:

> The trust shall continue forever unless the Trustees [Brad Gallant] terminate it and distribute all of the principal and income, which action may be taken by the Trustees in their discretion at any time. On such termination, the trust fund as then constituted shall be distributed to or for the use of such one or more charitable organizations, in such amounts, as the Trustees [Brad Gallant] select and determine. G:103.

197. Brad Gallant had arranged for himself the following profitable future situation: when Cathy, Domenic, and Danny passed away, the Gallant controlled Foundation stood to be funded by millions of dollars under the total and sole discretion of Brad Gallant, with no guidelines for fees, "forever", and only in the name of Keith Bradoc Gallant, with no mention of Day Pitney.

198. If Gallant ever left Day Pitney, Gallant would be able to take the Foundation and the Trust with him. Gallant did not disclose this to the D'Attilos.

MAY 2012:

199. Though things were proceeding "Onward", the Respondents were not quite done with papers that needed to be filed with the Probate Court. The preparation of the final Settlement Cost Statement continued. For example, on May 8, 2012 Koskoff paralegal Barbara Larocca emailed a draft Settlement Cost Statement to Brad Gallant (cc to Kathleen Nastri and Jim Horwitz) (G:106-107):

> Please review this draft of the Settlement [Cost] Statement (first attachment) compared to the one filed with the Probate Court (second attachment). I'm just waiting to confirm the payoff amount with Nancy Cavaliere (but this should be the right amount). There is a small difference between the amount of $12,823,395.00 on the probate judge's decree and the actual amount to the estate on the attached statement of $12,824,215.30.

200. Gallant responded "Barbara, I am OK with this…." G:106.

201. Gallant did express some concerns with the draft Settlement Cost Statement. After his painstaking review of the one page document, Gallant carefully pointed out (G:106):

- (1) there was an extra comma and that "Day**,** Pitney LLP" should be changed to "Day Pitney LLP"
- (2) that the description for $34,674.14 being paid to Day Pitney should be changed from "probate expenses" to "towards probate fees and expenses"
- (3) that a footnote should be added to identify certain payees, and
- (4) a place should be added for the mutual client (the D'Attilos) to sign on the dotted line of the falsified document.

202. As noted, Ms. Larocca pointed out a discrepancy that came to a total of $903.30 ($12,823,395.00 minus $12,824,215.30). G:106. But no one pointed out to Cathy, Domenic, or to the Probate Court, the "discrepancy" of $4,340,000, the difference between the 28% ($7,000,000) contingency fee that the Respondents were misappropriating, in violation of the law and the actual calculation of legal fees "Pursuant to statute" and the Retainer Agreement ($2,660,000).

203. On May 9, 2012 Gallant wrote to Cathy and Domenic assuring his clients "we have everything worked out" regarding the final Settlement Cost Statement. G:108.

204. Gallant also shared the news that since "we won't use up the full $330,000 reserve for the liens/advances", the D'Attilos and the Trust would get an extra $800+/- each, for a total of $1,600 that Gallant did not spend from the reserve. Gallant mentioned nothing about the misappropriation of $4,340,000+ from the D'Attilos. G:108.

205. The insurance check for $25,000,000 arrived on May 9, 2012.

206. The Koskoff Firm picked up the $25,000,000 check that day or the next day (May 9 or May 10, 2012).

207. On or about May 14, 2012, the Koskoff Respondents filed a formal withdrawal of the medical malpractice action against the medical malpractice Respondents.

208. That same day, on May 14, 2012, "KEITH BRADOC GALLANT" also became the executor and trustee of the Wills that he drafted on behalf of Cathy and Domenic. G:109-111.

209. On May 15, 2012, the Koskoff Firm sent a check for $12,824,415.30 "made out to the Daniel D'Attilo trust, Keith Bradoc Gallant, Trustee." G:112-113. Koskoff also sent a check made out to Day Pitney, LLP for $33,675.14 in legal fees and expenses. A week later, Gallant authorized the withdrawal of an additional $22,202.65 from the Trust for legal fees through May 16, 2012. G:114

210. On May 15, 2012 Cathy and Domenic went to the Koskoff office in Bridgeport to pick up a check for $4,165,284.73. G:115.

211. That left $8,010,299.97 of the D'Attilos' money still being held in trust by the Koskoff Respondents ($25,000,000 total settlement payment from the insurance carrier minus $16,989,700.03, which was the total amount paid to Brad Gallant as the Trustee and to the D'Attilos).

212. On or about May 14 or 15, 2012, the Koskoff Firm transferred $7 million from the funds they held in trust for the D'Attilos to the Koskoff Firm's business or other account as payment for legal fees, thereby instantly misappropriating, converting, and stealing $4,340,000 plus $2,660,000 that was the property of Cathy, Domenic, and Danny.

213. On or about that date, the Koskoff Firm also dispersed to themselves and/or to others $1,010,299.97 for reimbursement or payment of expenses.

214. Of that amount, on information and belief, the Koskoff Respondents reimbursed themselves at least $632,138.87 for "Lawsuit Costs as of 3/28/12" as set forth in the Settlement Cost Statement (G:92) but without providing any accounting or documentation to the Probate Court, Cathy, or Domenic for a penny of that amount.

215. Among other expenses, the Koskoff Respondents deducted $2,925.86 to pay "Wood LLP (tax attorney)." That was the amount specifically listed on the final Settlement Cost Statement submitted to the Bethel Probate Court. G:119. Brad Gallant, who was representing Cathy, Domenic, and Danny's Trust, made no inquiries regarding this particular expense either.

216. It was not until December 3, *20**14*** that the Koskoff Firm disclosed to the Complainants that Robert Wood, a tax attorney who charged $750 per hour, purportedly had been paid a total of $27,104.23, nearly ten times more than the $2,925.86 disclosed to the Probate Court. G:116, G:119. ¶158-162.

217. Thus, Cathy, Domenic, and Danny ended up paying for 100% of the lawsuit costs claimed to have been incurred by the Koskoff Firm without having been given a single receipt to document the expenses. This included Cathy, Domenic, and Danny paying nearly $30,000 for the tax attorney's warning that was never communicated to them, the GAL, Judge DePanfilis or Judge Egan, or acted upon by the Respondents.

218. On May 16, 2012, Brad Gallant requested a copy from the Koskoff Firm of the version of the Settlement Cost Statement signed by Cathy and Domenic. G:117.

219. Later that same day, Attorney Gallant sent an undated "fully signed Settlement [Cost] Statement from the underlying litigation in this matter" to Judge Egan, still indicating the Koskoff Firm was deducting 28% for attorney fees. G:118-119.

220. At the same time, and without consulting Cathy and Domenic, or asking for their permission (which they never would have given), Attorney Gallant wrote to Judge Egan as follows "I respectfully request that, if, your Honor finds it acceptable, the Guardianship Estate file be closed with a notation that all Guardianship assets are held by the Daniel Jacob D'Attilo Trust." G:118.

221. On May 18, 2012, Judge Egan closed the guardianship of the estate file as requested by Brad Gallant. G:120.

222. The D'Attilos did not know it, but Gallant's maneuver did not simply close the file, it terminated the D'Attilos as guardians of Danny's estate as well as their right to revoke the trust and transfer Danny's assets back to the estate, thereby effectively giving Brad Gallant, as sole Trustee, total control over Danny's Trust assets.

223. More than two years later, on September 16, 2014 (G:121), Judge Egan confirmed that the D'Attilos were no longer guardians of the estate as per the request of Attorney Gallant's May 16, 2012 letter. G:117.

224. To regain those rights, the D'Attilos would first have to learn what Gallant did (which they did not until late 2014), and then go through the expensive and time consuming process of filing a motion with the Probate Court. They are currently waiting for a hearing date to have their guardianship rights reinstated.

225. On May 17, 2012, immediately after receipt of trust funds from the Koskoff Firm, Attorney Gallant created a trust account at TIAA-CREF.

226. The funds for the Trust came from Cathy and Domenic as guardians of the estate. The trust certification that Gallant submitted to TIAA-CREF (G:122-128) named Danny as the only grantor ("self-funded") and inaccurately listed the Trust as "irrevocable".

227. On or about May 31, 2012, Attorney Gallant submitted an inventory to the Probate Court stating that the net settlement proceeds to Danny's estate were $12,824,215.30. Gallant's statement was "made under the penalties of false statement." G:129.

JUNE 2012 THROUGH 2013:

228. With the assistance of Brad Gallant and Day Pitney, the Koskoff Respondents had misappropriated millions of dollars. Danny, Cathy, and Domenic did not have a clue that this had happened.

229. However, life goes on and there were still Danny's needs. The negligent and intentionally below standard legal work of the Respondents as summarized further in the pending civil complaint led to

increasing conflicts between Cathy and Domenic on the one hand and Brad Gallant/Day Pitney on the other.

230. Unfortunately, the D'Attilos had to deal with many other things besides Brad Gallant, such as surgery for Danny in June 2012, the D'Attilos having to move again in September 2012 to another rental house, Danny's extended illness from November 2012 to February 2013, including a hospitalization for seizures, and more.

231. On February 15, 2013, Cathy D'Attilo sent an email to Brad Gallant expressing frustration over difficulties working with his office and that Danny recently had a seizure. Cathy signed it "a very sad and unhappy Client Cathy." G:133.

232. Gallant replied that her email was "unfair and inaccurate", offered to meet and wrote: "Certainly if you wish to hire a lawyer to represent you as individuals you should do that (but I doubt the Judge would authorize the Trust to pay for this.)." G:131-132.

233. Now, for the very first time since he was retained in February 2012, Brad Gallant suddenly was letting Domenic and Cathy know that they actually did not have any lawyers representing them as individuals. When did that happen?

234. This "advice" was a surprise to them because the D'Attilos had signed two Retainer Agreements with Day Pitney and had never received any notice of potential conflicts or that the representation had ceased. G:27-28, 72, 93-94.

235. Not knowing what else to do, "unhappy Client" Cathy contacted Kathleen Nastri and Jim Horwitz. Cathy wrote that Danny had been in and out of hospitals and that she was in tears and feeling "really lost". Cathy asked for guidance from "someone" at the Koskoff Firm, the same firm that she and her family had paid $7 million in legal fees plus 100% of all litigation expenses less than one year before. G:131.

236. Jim Horwitz did not respond to Cathy's plea for help.

237. Kathleen Nastri responded the next day and advised Cathy to continue to work things out with Brad Gallant and that Gallant is "a very good person, a talented lawyer and I trust his judgment." G:130-131.

238. Nastri noted that she was at trial and was not available to talk until at least the following week. The D'Attilos did not want to wait and contacted an attorney that Kathleen Nastri had previously mentioned as a potential trustee, Anne Crane of Berkowitz, Trager & Trager.

239. On February 22, 2013, Attorney Anne Crane had a phone conversation with Brad Gallant letting him know that Cathy and Domenic wanted him to resign and that Crane would replace Gallant as trustee. G:134.

240. Brad Gallant responded:

> I will of course consider the D'Attilos' request but I must say, preliminarily and with due respect, I can see no reason for me to resign as Danny's Trustee. I do not see how this would be in Danny's best interest. G:134.

241. On February 26, 2013, Kathleen Nastri forwarded Cathy's February 18 private email to Nastri and Horwitz directly to Brad Gallant (without asking Cathy's permission) because Nastri was concerned that Brad Gallant had heard that she (Kathleen) had said negative things about Brad Gallant. G:130.

242. Nastri did not express any concern to Brad Gallant about Cathy, Domenic, or Danny, or question any of the issues raised by Cathy's tearful and distressed email and Cathy's report that Danny suffered seizures, had pneumonia, and had been hospitalized.

243. Kathleen Nastri did not forward to Cathy a copy of her February 26 email to Brad Gallant. Instead, Nastri expressed her serious concerns solely and secretly to Gallant:

> I understand from Chris that you may be under the impression that I have said negative things about you to the D'Attilos, or to Anne Crane. I am forwarding my email [praising you] to the D'Attilo's [sic] so that you can see exactly what I have said. **I would hate for there to be any misunderstanding between you and me**. This is obviously a very difficult situation … G:130.

244. Brad Gallant replied:

> Thank you, Kathleen. I greatly appreciate your kind words in that email. **I couldn't feel more strongly about the importance of our professional relationship**. I have suggested some approaches to resolving this …. and I hope that we will be able to reach a resolution in Danny's best interests. G:130.

245. On March 18, 2013, with no resignation in sight from Brad Gallant, and at the advice of Anne Crane, the D'Attilos hired litigation counsel, Ivey, Barnum & O'Mara ("Ivey, Barnum"), to have Gallant removed as trustee.

246. On March 21, 2013, Attorney Michael Jones of Ivey, Barnum wrote to Brad Gallant reiterating Crane's request to resign. G:135-137. Jones pointed out some issues to Gallant such as potential conflicts of interest, Gallant's misrepresentations to the D'Attilos regarding their power to fire him, and the "puzzling" legal advice and "statements" that resulted in the D'Attilos "abruptly" and "unnecessarily" moving out of Norwalk.

247. Coincidently, Attorney Jones' March 21, 2013 letter to Gallant was sent ten years to the day after the D'Attilos signed the Retainer Agreement with the Koskoff Firm. However, Ivey, Barnum mentioned nothing to Brad Gallant about the March 21, 2003 Retainer Agreement and never questioned the medical malpractice settlement calculations even though Ivey, Barnum knew there had been a $25 million settlement and also knew the exact amount of fees and expenses deducted by the Koskoff Firm.

248. Gallant started to negotiate with Jones. Despite Gallant's alleged concerns that his resignation would not in the best interests of Danny, he was apparently willing to resign if he received a full payment of the annual "commission" of approximately $64,000, although the next year of his trusteeship had not yet begun and seeking fees for legal work he would never do was improper and unethical. G:138-139.

249. Attorney Jones, in reply to Crane, noted that Gallant "would have trouble getting more than he is owed due to the Probate Court oversight." G:138.

250. Jones added: "If [Gallant] is as sleazy as he seems, I could see him trying to get the balance from Dom and Cathy."

251. Both Crane and Jones agreed that the D'Attilos would have a potential ethics grievance against Brad Gallant. G:138-139.

252. Attorney Gallant, in reply to Attorney Jones' March 21, 2013 letter, stated in part: "I do not believe it would be productive for me to attempt to refute or explain my views on each of the points in your letter." G:140.

253. In fact, Gallant did not deny the allegations and did not provide any explanation for his conduct. G:140.

254. Unfortunately, Ivey, Barnum failed to make further inquiries despite Gallant's "puzzling" advice to move out of Norwalk "abruptly", Gallant's "sleazy" demands, the ethical concerns, or the amount of fees the D'Attilos and Danny's Trust had paid to Day Pitney and the Koskoff Firm.

255. Instead, on April 3, 2013, Michael Jones replied to Gallant: "It is unfortunate that you have not agreed to voluntarily resign your position as Danny's Trustee. We will be moving forward to file the appropriate paperwork necessary to have Ms. Crane succeed you as Trustee." G:141.

256. At some point in the next three weeks, Gallant changed his mind and no longer believed that it was against the best interests of Danny if he resigned as Trustee. On April 12, 2013, before his first anniversary as Trustee, Gallant wrote to the Probate Court to signal his "intention" to resign. G:142.

257. On or about August 6, 2013, the Probate Court approved an amended trust naming a different attorney as trustee. See, e.g. G:143-147.

258. On August 15, 2013, Brad Gallant submitted his resignation as the Trustee of Danny's "Irrevocable Trust". G:148.

259. According to the Trustee who replaced Brad Gallant, Day Pitney was actually reimbursed **$131,280** by Danny's Trust for work done "from 4-24-12 through 8-15-13" (15.75 months). On information and belief, the trust fee portion is more than $40,000 in excess of Day Pitney's fee schedule for 15.75 months. *E:72. ¶344.*

260. On December 6, 2013, Cathy and Domenic hired Attorney Paul J. Ganim who said he would look into forum shopping, conflicts, and other issues. G:149. Again, there was no mention of the March

21, 2003 Retainer Agreement or the 28% contingency fee because the D'Attilos had been thoroughly defrauded and did not have the slightest clue about what had happened.

261. In or about May 2014, in what was either a remarkable coincidence or evidence of further favors bestowed, Brad Gallant's son, a second law student in New York, was hired as a summer associate at Koskoff, Koskoff, & Bieder. G:150.

262. On January 26, 2015, the Koskoff Respondents filed a motion in the current civil case, seeking to enforce Section V of the March 21, 2003 Agreement. Respondents G:151:152. The Koskoff Respondents included as their Exhibit A, the March 21, 2003 Retainer Agreement. G:153-155. That is the only agreement that the Koskoff Respondents included in their motion.

263. Moreover, though Section V specifically limits arbitration to "*disagreements*" regarding "fees, costs, expenses….", the Respondents in their motion did not claim to have any "disagreements" with the validity of Section II of the same Agreement. As noted previously, Section II of the March 21, 2003 Agreement states in part: "**Pursuant to statute**, K K & B" will abide by the requirements of §52-251c.

264. While Complainants has opposed the motion on multiple grounds including that the arbitration clause as written is against public policy[1], the Koskoff Respondents' motion to enforce the arbitration provision of the March 21, 2003 Retainer Agreement is an implicit admission (made less than thirty days after the commencement of the lawsuit) that the Respondents knew at all times that the March 21, 2003 Agreement is the one and only agreement in force and that the Respondents were *never* entitled to a 28% contingency fee.

265. These and other facts form the basis of the pending civil case as well as this grievance.

266. The Respondents are sophisticated and experienced attorneys, many with an extensive practice focused on personal injury and wrongful death.

267. As of 2012, the Respondents had collectively practiced law for about 213 years (Horwitz 28 years + Nastri 26 years + Bloss 28 years + Koskoff 48 years + Lichtenstein 37 years + Gallant 34 years + Iannantuoni 12 years).

268. As a group, they have attended at least 49 years of college and law school. Brad Gallant has an advanced degree (LL.M) from the University of London.

269. In contrast, Domenic D'Attilo only went as far as 11th grade of high school, worked as a mason (bricklayer) since he was 16 years old and eventually had a successful masonry business, until the economic downturn, combined with illness and injuries.

270. Cathy D'Attilo graduated high school, did not go to college and worked in various office capacities mostly in doctors' offices, and second jobs waitressing, hair dressing, and others, to make ends meet, starting in high school until the time Danny was born. Cathy also helped Domenic manage his business from home part-time while she had other jobs as well.

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[1] *See, e.g.*, civilinquiry.jud.ct.gov/DocumentInquiry/DocumentInquiry.aspx?DocumentNo=8610308.

271. Danny is permanently disabled and will be never be able to attend high school, go to college, law school, obtain an LL.M, become a mason, have children, or even buy a puppy on his own. *See* ¶323. Unless there is a medical/technological miracle sometime in the next thirty years related to his severe injuries, Danny will continue to have great difficulty in communicating even basic needs.

272. The sophisticated and experienced Respondents, all Connecticut attorneys, knew that Conn. Gen. Stat. §52-251c was in full force and effect on March 21, 2003 when the Retainer Agreement was signed with the Koskoff Firm, and that §52-251c remained in full force and effect at all times, including during the first trial in 2009, during the second trial in 2011, during the mediation in November 2011, during all negotiations, on January 11, 2012 when the settlement was signed, on February 15, 2012 when the Koskoff Respondents sent the 2003 Retainer Agreement to Colleen Fries and Brad Gallant, on May 15, 2012 when the Koskoff Respondents illegally and unethically took exclusive possession of millions of dollars that belonged to the D'Attilos, and on January 26, 2015 when Respondents sought to enforce a provision of the March 21, 2003 Agreement in the course of pending civil litigation.

273. The Respondents defrauded the Complainants and took advantage of the Complainants' trust.

274. On information and belief, these illicitly obtained funds were transferred to the individual Koskoff Respondents and/or the corporate entity.

275. The Koskoff Respondents accomplished this fraudulent scheme in direct concert with Brad Gallant and Day Pitney through knowing and intentional fraudulent misrepresentations and concealment of material facts meant to deceive Cathy and Domenic D'Attilo as summarized above.

276. In reliance on these and other fraudulent misrepresentations, the D'Attilos were defrauded into believing that the Koskoff Firm was entitled to $7,000,000 in legal fees.

277. That was a lie, all of the Respondents knew it was a lie, all the Respondents intended that the D'Attilos be defrauded by that lie, the D'Attilos were defrauded, and have suffered damages as a result.

278. As detailed above, the Koskoff Respondents were entitled only to legal fees "Pursuant to statute" as set forth in the March 21, 2003 Retainer Agreement, now Exhibit "A" of Respondents' motion.

279. In 2005, the state legislature codified what was already implicit in §52-251c, and was applicable to "causes of action accruing on or after" July 13, 2005. The causes of action in the pending civil complaint against the Respondents arose on or after January 1, 2012.

280. Conn. Gen. Stat. §52-251c requires attorneys representing clients in personal injury cases to strictly limit contingency fees to a predetermined sliding-scale unless a client knowingly and voluntarily signs a very specific, "conspicuous", "in **boldfaced** type" waiver of rights to that limitation, as follows:

"I UNDERSTAND THAT THE FEE SCHEDULE SET FORTH IN SECTION 52-251c OF THE CONNECTICUT GENERAL STATUTES LIMITS THE AMOUNT OF ATTORNEY'S FEES PAYABLE BY A CLAIMANT AND THAT THE STATUTE WAS INTENDED TO INCREASE THE PORTION OF THE JUDGMENT OR SETTLEMENT THAT WAS ACTUALLY RECEIVED BY A CLAIMANT. NOTWITHSTANDING THAT THE LEGISLATIVE INTENT IN ENACTING THAT FEE SCHEDULE WAS TO CONFER A BENEFIT ON A CLAIMANT LIKE MYSELF, I KNOWINGLY AND VOLUNTARILY WAIVE THAT FEE SCHEDULE IN THIS CLAIM OR CIVIL ACTION."

281. Any waiver must be in writing, must set forth the full fee schedule otherwise mandated by law, and must be signed and acknowledged by the clients, and countersigned by a notary public, or other person authorized to take acknowledgments. §52-251c(e).

282. In addition, prior to a client signing, the attorney must explain the statute to the client, advise the client of the client's "right to seek representation by another attorney willing to abide by the percentage limitations", and, critically, most provide the client with "a sufficient period of time to review the proposed contingency fee agreement" and, if the client wishes, sufficient time to "seek representation by another attorney prior to entering into such agreement." §52-251(c)(e).

283. None of those requirements were met by the Respondents. Instead, on or about May 15, 2012, the Koskoff Respondents intentionally and knowingly converted funds held in trust belonging to Cathy, Domenic and Danny, after defrauding the Complainants as summarized above. Koskoff Respondents were aided and abetted in this by the Day Pitney Respondents.

284. At that moment, on May 15, 2012, the Koskoff Respondents exercised absolute rights of ownership to property actually belonging solely to the D'Attilos, thereby damaging the Complainants.

285. Once those funds were transferred to the Koskoff Respondents' business or other accounts, the D'Attilos were permanently denied their ownership rights as established by §52-251c.

286. The above facts establish that the Respondents intentionally sought to deprive the Complainants of money that belongs solely to the D'Attilos.

287. Moreover, Conn. Gen. Stat. §52-564 provides: "Any person who steals any property of another, or knowingly receives and conceals stolen property, shall pay the owner treble his damages."

288. At the moment the insurance carrier's representative signed the January 11, 2012 Med-Mal Agreement, the Complainants had exclusive legal rights to that $25 million minus only documented expenses and legal fees as permitted by law and as memorialized by the March 21, 2003 retainer agreement.

289. The Koskoff Respondents were legally and ethically obligated, and had a fiduciary obligation, to account for and to make sure that the Complainants received all of their money, down to the last penny.

290. As of March 21, 2003, the Koskoff Respondents knew that the Retainer Agreement with the D'Attilos subjected any contingency fee to the statutory sliding scale found in §52-251c. They also knew that this meant at the time of the Med-Mal settlement that they were only entitled to be paid a maximum of $280,000 in legal fees for the first $1.2 million recovered and then a maximum of 10% of legal fees ($2,380,000) for the remaining $23.8 million recovered, for a total maximum legal fee of $2,660,000. ¶22, 104.

291. As of no later than February 16, 2012, the Day Pitney Respondents also knew that the Koskoff Respondents were not entitled to a 28% contingency fee, but only the amount "Pursuant to statute" as specified in the 2003 Retainer Agreement. Despite that, the Respondents intentionally deprived the Complainants of their funds, and thereby committed larceny.

292. In Connecticut, criminal larceny is defined by Conn. Gen. Stat. §53a-119 and §§53a-122 through 53a-125b. Conspiracy is defined by Conn. Gen. Stat. §53a-48.

293. The Koskoff Respondents, aided and abetted by the Day Pitney Respondents, obtained the property of the Complainants by false pretenses, with the intention to deceive the Complainants, and succeeded in the deception, thereby committing larceny.

294. As detailed above, Brad Gallant was an active participant in carrying out the Koskoff Respondents' scheme to misappropriate millions of dollars from the Complainants.

295. On information and belief, Respondent Rebecca Iannantuoni attended at least one of the meetings where the conspiracy unfolded (G:59), and appears to have been involved in the drafting of the Settlement Cost Statement submitted to the probate court. G:76.

296. The documentary evidence establishes that the Koskoff Firm and Day Pitney worked together on the scheme. The factual allegations above indicate multiple overt actions taken in furtherance of that scheme. The documentary evidence further supports the conclusion that the Respondents intended to deprive the Complainants of their property and successfully deprived the Complainants of their property.

297. At this point, Complainants do not know whether the Respondents used the United States mail or an interstate carrier to further their conspiracy, or whether email or phone communications went across state lines. If so, there may be federal criminal violations involved as well. *See, e.g.*, 18 USC §1341, §1343.

298. In any case, as a result of all of the above, the Respondents are jointly and severally liable for civil conspiracy as defined by Connecticut law, whereby the above named Respondents, and their respective firms, combined to do a criminal act or a lawful act by criminal or unlawful means.

299. One or more of the Respondents acted pursuant to the scheme and in furtherance of their objective to defraud Cathy, Domenic, and, through them, defraud Danny D'Attilo, and succeeded in obtaining property that the Respondents knew did not belong to the Respondents, but belonged solely to Cathy, Domenic, and Danny D'Attilo.

300. In addition, Conn. Gen. Stat. §52-251(c)(g) states:

> **No fee shall be payable to any attorney who seeks a fee** that exceeds the percentage limitations of subsection (b) of this section unless the claimant has waived such limitations pursuant to this section and the contingency fee agreement complies with the requirements of subsection (e) of this section.

301. Once the Respondents officially submitted or endorsed documents to the Probate Court **seeking** payment of legal fees to the Koskoff Respondents that exceeded the percentage limitations of §52-251c and the March 21, 2003 Retainer Agreement, they no longer had any right to receive any legal fees.

302. The Koskoff Respondents first submitted an Application to Compromise and Settlement Costs Statement on or about January 12, 2012 to the Norwalk Probate Court illegally seeking 28% "Attorney Fees." G:21-23.

303. The Koskoff Firm was *never* entitled to 28%.

304. On April 24, 2012, the Day Pitney Respondents appeared in Probate Court in support of the Application to Compromise and the unsigned Settlement Costs Statement drafted in cooperation with the Koskoff Respondents which also falsely indicated that the Koskoff Respondents were entitled to a 28% contingency fee.

305. Respondent Jim Horwitz was present at the hearing, and represented both the Koskoff Firm and Danny but said nothing to the Court or to the D'Attilos.

306. The Koskoff Respondents were not entitled to payment of any legal fees as of January 12, 2012.

307. In knowing violation of law, the Koskoff Respondents transferred the full amount of legal fees that they falsely claimed were due to them on or about May 15, 2012.

308. Despite their fiduciary duties, the Respondents engaged in dishonest behavior, disloyalty, and conflicts of interest. The Respondents also failed to conduct themselves in a manner befitting officers of the court.

309. As summarized above, the Respondents intentionally and secretly worked against the interests of the Complainants for the financial benefit of the Respondents.

310. The Respondents took advantage of the Complainants in many ways by their breaches of fiduciary duty. As a result of these breaches of fiduciary duty, the Complainants were damaged as summarized above.

311. In addition, the Respondents aided and abetted each other in breaches of fiduciary duty that would not have been possible without the cooperation of all the Respondents.

OTHER FACTS RELEVANT TO THIS GRIEVANCE

312. The D'Attilos had no idea of what had been going on behind their backs. However, despite winning millions of dollars, their lives had turned into the very nightmare their attorneys falsely told them would engulf them unless they immediately left the home they had been living in since 2004 to avoid the jurisdiction of the Norwalk Probate Court.

313. On May 13, 2014, the undersigned wrote to the Koskoff Firm (as well as Day Pitney and Ivey Barnum) informing them "I have been retained to clarify what has gone on, why there have been difficulties and delays, and most importantly, to see what can be done to clear up any issues so that Danny's needs are met as expeditiously as possible" and requested copies of their entire files.

314. While voluminous documents have been turned over, the undersigned, on behalf of the Complainants, have been attempting for months to get additional documents from the case plus answers to specific questions from the Koskoff Respondents.

315. For example, on November 14, 2014, the undersigned asked the Koskoff Firm's counsel to disclose what, if any, financial relationship the Koskoff Respondents had with Lawsuit Funding Solutions ("LSF"), the company that advanced money to the D'Attilos at a nearly 30% interest rate. G:9.

316. Though that should have been an easy question to answer, as of this date (February 17, 2015), no response has been received. The failure to receive a simple yes or no answer is troubling, particularly because one of Koskoff's financial advisors (John Bair) sent an email to Kathleen Nastri indicating that the advisor believed he could find "the same level of resources for somewhere between 10 - 15% per annum…" G:10. There were no emails reviewed by the undersigned indicating that this issue of a lower rate was pursued.

317. If there is no connection or financial interest between LSF and the Koskoff Firm, then there is no ethical issue. However, if there is such a connection, no connection was ever disclosed to the D'Attilos. Even if there is no connection, the Complainants, as former clients, were entitled to at least a prompt response from the Koskoff Firm.

318. On another issue, although the D'Attilos paid the Koskoff Firm more than $632,000 in litigation expenses, only a few invoices representing only a tiny percentage of the total amount were turned over in 2014. On December 3, 2014, the attorney for the Koskoff Firm wrote turned over a computer printout, but not more documents, stating: "we are uncertain if there are any invoices still in existence related to this matter, and we are verifying this now." G:156. The Complainants have heard nothing further about this.

319. Without seeing original invoices containing explanations of work, the D'Attilos have no way of confirming the legitimacy or reasonableness of expenses. Where are these invoices? And what else has the Koskoff firm not turned over, or destroyed?

320. This problem did not just arise. For example, the following is the entirety of what Brad Gallant (and Colleen Fries) obtained from the Koskoff Respondents on February 15, 2012 to justify one of the Koskoff Firm's main litigation expenses for experts (G:33, 68):

LAWSUIT COSTS – as of 12/16/11:

EXPERTS (physicians' and insurance consultants' reviews, consultations, depositions and two trial appearances)	416,970.33

321. The Probate Court was given even less detail (G:23, 77, 92):

D'ATTILO V. VISCARELLO

Settlement		$25,000,000.00
Attorney's Fees (28%)	$7,000,000.00	
Lawsuit Costs as of 3/28/12	+632,138.87	
		-7,632,138.87
Net to Clients in Present Value		$17,367,861.13
Escrow for future costs, including probate-related issues (estimated)		-50,000.00
Net To Clients		$17,317,861.13

322. While Gallant rubberstamped every penny in legal expenses claimed by the Koskoff Firm without asking for any documentation, after Gallant became trustee of Danny's estate he demanded that Cathy and Domenic justify every single penny that they spent. For example, here is an invoice submitted by the D'Attilos to Brad Gallant (G:156, obtained from Gallant's files), for Allegra allergy relief purchased by the D'Attilos on June 7, 2012, 12:06 p.m., at the Danbury Walmart, for $5.78 plus $.37 tax, paid with $10 in cash, receiving $3.85 in change:


Walmart
Save money. Live better.
(203) 791 - 1929
MANAGER JOHN RUGGIERI
67 NEWTOWN RD
DANBURY CT 6810
ST# 3543 OP# 00003012 TE# 13 TR# 01176
ALLEGRA 40Z 004116742444 10.78 X
COUPON 41167 054116773000 5.00-T
SUBTOTAL 5.78
TAX 1 6.350 % 0.37
TOTAL 6.15
CASH TEND 10.00
CHANGE DUE 3.85
ITEMS SOLD 1
TC# 5841 4934 4440 2314 0043
"Like" Walmart on Facebook
www.facebook.com/Walmart
06/07/12 12:06:58

323. Brad Gallant even became involved in discussions as to whether Danny's $12 million+ trust controlled by Gallant would pay for Danny's puppy. G:158. *See* ¶271.

324. Despite charging significant legal fees for drafting a Trust and Wills that contained mostly boilerplate provisions and did not even address the primary concerns that the Complainants had, Day Pitney failed to review the January 11, 2012 Med-Mal Agreement and failed to determine that there were significant deficiencies that required immediate attention and correction, or that the Koskoff Respondents had committed legal malpractice in drafting that agreement.

325. In addition, the Day Pitney Respondents failed to address the clearly stated concerns and needs of the Complainants, including but not limited to the fact that the D'Attilos wanted legal documents drafted by Day Pitney to protect Danny now and in the future.

326. In the end, despite the unethical exorbitant legal fees, the Trust, Wills, and Foundation were woefully deficient and wholly inadequate in terms of the actual goals of the clients.

327. It appears that the main focus of the documents drafted by Brad Gallant was to channel all remaining funds into the standby Foundation after the D'Attilos passed away, as exemplified by a flowchart from Gallant's files. G:159.

328. Prior attorneys, including Anne Crane, Michael Jones, and Paul Ganim, took no action to terminate the standby Foundation created by Brad Gallant, though the D'Attilos did not want Gallant to have anything more to do with them or with Danny.

329. Recently, when the D'Attilos instructed Attorney Gallant to terminate the Foundation, as per the express provisions of Section 8 of the Foundation documents that Gallant drafted (G:103), Gallant claimed that the Foundation was just "a piece of paper" and that there was "nothing to terminate". G:160.

330. After further demands from his former clients to terminate the Foundation, the same clients who had paid him thousands of dollars to draft that "piece of paper", Gallant finally "agreed" to terminate the Foundation but with one major condition: only if the D'Attilos agreed to "hold harmless Day Pitney LLP and me [Brad Gallant)" for any damages caused by terminating the Foundation that Gallant had drafted. G:161.

331. In other words, Attorney Gallant did not want to take responsibility for any consequences caused by implementing the termination provision of the legal document that he had drafted and had charged thousands of dollars to produce. His refusal to terminate the trust he created unless given a release of liability should be considered unethical.

332. After further correspondence and a threat of litigation over the issue, Gallant finally relented by amending the Foundation to permit the D'Attilos to terminate the Foundation that Gallant originally said "there is nothing to terminate." G:162-164. On December 8, 2014, Gallant "confirmed" that the Gallant "forever" Foundation was finally, unconditionally, and irrevocably, terminated. G:165.

333. Similarly, in 2012, Gallant also knew that Cathy and Domenic wanted to have the right at all times to fire him as Trustee of Danny's trust.

334. In fact, Gallant represented himself in the trust that he drafted only to be the "Initial Trustee." G:82. One of the crucial provisions of the Trust drafted by Brad Gallant was giving the guardians of Danny's estate (that is, Cathy and Domenic) the power "at any time [to] apply to the Probate Court for an order to transfer all or any portion of the trust property to DANNY's guardianship estate or to terminate this Article 1 trust." G:84.

335. Brad Gallant wrote to Judge Egan on May 18, 2012, asking the judge to close the guardianship file. G:118. As a direct result, Judge Egan closed the file which also terminated the D'Attilos as the guardians of Danny's estate. Therefore, the Complainants lost their right to implement one of the crucial terms of the Trust that Day Pitney had drafted for them.

336. Brad Gallant unethically deceived his clients into believing they had a right to fire him at any time.

337. Among other things, these more recent events with the Foundation and Gallant's unreasonable refusal to terminate (¶328-332), and then, his subsequent reversal of position, also demonstrate that Gallant could and should have set up the original Trust to be terminated at any time by Cathy and Domenic without the need for court intervention. Gallant failed to do this. Instead, as noted above, Gallant terminated the D'Attilos as guardians of Danny's estate, and took away their right to revoke Danny's Trust that Gallant solely controlled.

338. On another issue, with the advice of Brad Gallant and an architect, the Trust purchased a lot to build a house on in Shelton for about $219,000 plus expenses, a purchase approved by the Probate Court as well.

339. By this time, Brad Gallant didn't object to the D'Attilos being in Shelton because he said it would not change the jurisdiction of the Bethel court. Gallant neglected to inform his clients the reason jurisdiction would not change is because he had made sure his clients were no longer guardians of the estate, and only the Trust remained.

340. Brad Gallant and Day Pitney charged the Trust $14,661.00 for real estate transaction related fees (G:168) even though a standard fee for closing on a transaction of that nature would be approximately $1,000. This too is unethical.

341. On information and belief, the Day Pitney Respondents also charged the Complainants approximately $10,000 to prepare straightforward Wills and related estate documents, and Brad Gallant's "forever" standby Foundation. Gallant advised the D'Attilos it was okay for Gallant take half the bill from Danny's trust. The estate documents produced by Day Pitney at great expense to the Complainants, were not even final versions, but only a "'stop-gap' measure". G:169.

342. On March 20, 2013, Attorney Anne Crane of Berkowitz, Trager & Trager wrote to Attorney Michael Jones of Ivey Barnum (G:170-171), commenting:

> This is so outrageous, so inappropriate, so unethical and legally indefensible I am dumbfounded. This is not an expense that should be paid out of the trust. More importantly it is the result of how Brad responded to all of their complaints - deflecting,

> seeming to get them a result they could live with while paying Brad's fee without any meaningful review of the issue and ultimately all at the D'Attilo's expense. This is something that must come up in the accounting proceedings even if he resigns. This is so outrageous that I have a hard time believing it could be true. It is such a misuse and violation of his responsibility as trustee particularly with unsophisticated clients. OK, I'll stop.

343. The Day Pitney Respondents had a fiduciary and ethical obligation to either charge market rates for its services or else find another law firm to do work, such as for closing the sale of a building lot in Shelton Connecticut, or estate planning.

344. In addition, on information and belief based on the calculation of the current Trustee, Day Pitney charged Danny's trust $131,280 for Trustee's fees in the course of about fifteen months, plus other legal fees directly to Cathy and Domenic. ¶260. Subtracting the $14,661 for the real estate transaction would mean Danny's Trust apparently paid Day Pitney $116,619 for trust work pursuant to its April 2, 2012 letter stating it would charge one half of 1% of trust assets per year, "pro-rated for any partial year." G:72.

345. The Trust was valued at approximately $12.8 million on April 24, 2012, which would mean Day Pitney would be charging about $64,000 for trust work through April 23, 2013, about $5,333 per month. Gallant formally resigned on August 15, 2013, for a total of about 15.75 months in the position. G:148. Therefore, based on Day Pitney's own fee schedule, Brad Gallant could have authorized no more than about an additional $20,000 in Trust fees, for a total of about $84,000. Instead, it appears the payment was $116,619 plus the $14,661 for the real estate transaction.

RECENT DEVELOPMENT

346. The Respondents were served complaints in mid-December 2014.

347. The Respondents or their attorneys made no effort to contact the undersigned with any defense or explanation.

348. On February 2, 2015, an article appeared in the Connecticut Law Tribune (G:174-178) with the headline:

> **LAW FIRM SAYS IT WAS JUSTIFIED IN KEEPING 28 PERCENT OF MED-MAL SETTLEMENT**

349. The article states in part:

> In an interview, Michael Koskoff, the firm's senior partner, disputed the allegations of Domenic and Cathy D'Attilo, who claim that they were legally obligated to pay a contingency fee of less than 11 percent on a settlement of $25 million, and that a 28 percent fee was unjustified.
>
> "This is a baseless claim," Koskoff said. "They knew the fee was 28 percent [of the total award] all along; **they knew it was going to be 28 percent when they agreed to the**

> **settlement. There were settlement offers made, which they agreed to, based on a 28 percent fee**. **They signed documents for the probate court agreeing the fee was going to be 28 percent**. They never had any objection at any point."
>
> Koskoff continued: "For them to make their first objection to the fee, two years after the settlement, in the form of this lawsuit is outrageous."
> ***
> But Koskoff said it is highly unusual for Connecticut personal injury lawyers to enter into agreements to pursue complex contingent fee litigation without obtaining a waiver of the statutory limits. He estimated that in 90 percent of complex personal injury cases, plaintiffs waive the statutory formula and agree to a higher amount. If the client waives the statutory formula, Koskoff said, the legislature allows fees up to one-third of the entire recovery.

350. Attorney Koskoff's statement is further evidence that the Koskoff Respondents intentionally defrauded the Complainants at the time of settlement in January 2012 through and including the time they dispersed funds in May 2012.

351. According to Attorney Koskoff, approximately 10% of personal injury plaintiffs do not waive the protection of §52-251c. Yet, despite the fact that the D'Attilos were among the 10% who did not waive the protection of the statute, Attorney Koskoff stated that the D'Attilos "knew it was going to be 28% **when they agreed to the settlement**" and cites "signed documents for the probate court agreeing the fee was going to be 28 percent."

352. Two documents were signed on January 4, 2012. G:17-18. These documents were drafted by the Koskoff Firm. There is also the signed document dated January 11, 2012 filed with the Norwalk Probate Court (G:23a). An unsigned modified version of that document was submitted to the Bethel Probate Court by Brad Gallant on or about April 2, 2012. G:73-77. On April 25, 2012, Brad Gallant submitted a corrected but unsigned version to the Bethel Probate Court. G:91-92. Finally, an undated version of the document was filed with the Bethel Probate Court on or about May 16, 2012. (G:119).

353. (This undated document is the only version of the settlement authorization for which the Koskoff Respondents have not turned over a copy of the original and there are questions regarding the circumstances around this particular document that have not yet been answered.)

354. The documents are not contracts, they are not amendments to the March 21, 2003 Retainer Agreement (which is not even referenced in the documents), and there is no §52-251c waiver language.

355. As demonstrated by the original agreement proposed by the Koskoff Firm in February 2003, (G:1), the Koskoff Firm was fully aware of its obligation to obtain a written waiver of the statutory limits of §52-251c since at least 2003.

356. Even if the documents had been formal contracts, and even if these hypothetical contracts indicated it was amending the March 21, 2003 Retainer Agreement, and even if this hypothetical contract included the required waiver language, it still would not comply with the other requirements of §52-251c:

> (d) Prior to a claimant entering into a contingency fee agreement that provides for a fee that exceeds the percentage limitations of subsection (b) of this section, the attorney shall (1) explain the percentage limitations of subsection (b) of this section to the claimant and the reasons the attorney is unable to abide by those limitations; (2) advise the claimant of the claimant's right to seek representation by another attorney willing to abide by the percentage limitations of subsection (b) of this section; and (3) allow the claimant a sufficient period of time to review the proposed contingency fee agreement and, if the claimant wishes, seek representation by another attorney prior to entering into such agreement.

357. But in January 2012, §52-251c was still in full force and effect as it had been since at least 1987, and the documents referenced by Attorney Koskoff did not meet *any* of the requirements of the statute:

> (e) No waiver of the percentage limitations of subsection (b) of this section shall be valid unless the contingency fee agreement (1) is in writing, (2) sets forth in full the fee schedule of subsection (b) of this section, (3) contains a conspicuous statement, printed in boldface type at least twelve points in size, in substantially the following form: "I UNDERSTAND THAT THE FEE SCHEDULE SET FORTH IN SECTION 52-251c OF THE CONNECTICUT GENERAL STATUTES LIMITS THE AMOUNT OF ATTORNEY'S FEES PAYABLE BY A CLAIMANT AND THAT THE STATUTE WAS INTENDED TO INCREASE THE PORTION OF THE JUDGMENT OR SETTLEMENT THAT WAS ACTUALLY RECEIVED BY A CLAIMANT. NOTWITHSTANDING THAT THE LEGISLATIVE INTENT IN ENACTING THAT FEE SCHEDULE WAS TO CONFER A BENEFIT ON A CLAIMANT LIKE MYSELF, I KNOWINGLY AND VOLUNTARILY WAIVE THAT FEE SCHEDULE IN THIS CLAIM OR CIVIL ACTION.", and (4) is signed and acknowledged by the claimant before a notary public or other person authorized to take acknowledgments.

358. According to the January 4, 2012 document on page G:17, the insurance carrier had already made a firm offer of $18 million as of that date. No attorney could reasonably or even unreasonably claim that a client who was contractually obligated to pay the attorney approximately 10% contingency fee on January 3, 2012, would agree to pay 28% on January 4, 2012. Put another way, no one would agree to pay $7 million on a contract that only called for $2.6 million unless there was fraud or duress, let alone a family with a child whose special needs would require millions of dollars to care for him over his lifetime.

CONCLUSION

359. The above facts summarize and establish, *inter alia*, serious ethical and fiduciary violations, the willfulness of the Respondents' acts, undisclosed conflicts of interest, self-dealing, dishonesty, mishandling of client funds, egregious disloyalty displayed by the Respondents to their clients, their current unwillingness to take responsibility, taking advantage of a disabled client (who the Respondents knew would never be able to defend himself) and his two parents, Cathy and Domenic, who had every right and reason to expect better from attorneys admitted to practice law in the State of Connecticut.

360. The undersigned, on behalf of the Complainants, believes that the Respondents may have violated one or more Rules of Professional Conduct, including but not necessarily limited to Rules:

> 1.4. Communication, 1.5. Fees, 1.6. Confidentiality of Information, 1.7. Conflict of Interest: Current Clients, 1.8. Conflict of Interest: Prohibited Transactions, 1.9. Duties to Former Clients, 1.14. Client with Impaired Capacity, 1.15. Safekeeping Property, 3.3. Candor toward the Tribunal, 4.1. Truthfulness in Statements to Others, 5.1. Responsibilities of Partners, Managers, and Supervisory Lawyers, 5.2 Responsibilities of a Subordinate Lawyer, 5.3. Responsibilities regarding Nonlawyer Assistance, 7.1. Communications concerning a Lawyer's Services, 7.2. Advertising, 8.3. Reporting Professional Misconduct and 8.4. Misconduct.

361. Section 52-251c was enacted by the Connecticut State Legislature "to protect the public from overreaching attorneys." *Parnoff v. Yuille*, 139 Conn.App. 147, 57 A.3d 349 (2012).

362. Our Supreme Court noted in *McKnight v. Gizze*, 107 Conn. 229, 140 A. 116, 118 (1928):

> "[Connecticut courts] rightly scrutinize transactions between client and attorney with great care, for it is in the highest degree essential that the utmost good faith and mutual understanding be shown, and, if there are doubts, they will be resolved in favor of the client. …. **So strict is the rule on this subject, that dealings between an attorney and his client are held, as against the attorney, to be prima facie fraudulent, that is to say, the burden is not upon the client to establish fraud and imposition, but the burden rests upon the attorney to show fairness, adequacy and equity**". (citations and quotations omitted).

363. In *Matza v. Matza*, 226 Conn. 166, 627 A.2d 414 (1993), the Connecticut Supreme Court stated in part (citations and quotation marks omitted):

> … where a fiduciary relation exists between the parties to a transaction or contract, and where one has a dominant and controlling force or influence over the other…if the superior party obtains a possible benefit, equity raises a presumption against the validity of the transaction or contract, and casts upon such party the burden of proving fairness, honesty, and integrity in the transaction or contract.... Therefore, it is only when the confidential relationship is shown together with suspicious circumstances, or where there is a transaction, contract, or transfer between persons in a confidential or fiduciary relationship, and where the dominant party is the beneficiary of the transaction, contract, or transfer, that the burden shifts to the fiduciary to prove fair dealing.

364. In Disciplinary *Counsel v. Parnoff*, No. CV126031943S, 2013 WL 5614736, at *4 (Conn. Super. Sept. 19, 2013), Judge Bellis stated:

> An attorney as an officer of the court in the administration of justice, is continually accountable to it for the manner in which he exercises the privilege which has been accorded him. His admission is upon the implied condition that his continued enjoyment of the right conferred is dependent upon his remaining a fit and safe person to exercise it, so that when he, by misconduct in any capacity, discloses that he has become or is an unfit or unsafe person to be entrusted with

> the responsibilities and obligations of an attorney, his right to continue in the enjoyment of his professional privilege may and ought to be declared forfeited… (citations and quotation marks omitted)

365. Courts apply close judicial scrutiny to contracts involving the attorney-client relationship. *Marcus v. DuPerry*, 223 Conn. 484, 611 A.2d 859, 861 (1992). As a result of a lawyer's special role in the legal system, contracts between lawyer and client receive different treatment than other contracts. Joseph M. Perillo, *The Law of Lawyers' Contracts Is Different*, 67 Fordham L. Rev. 443, 445 (1998).

366. It is well settled that our system of regulating attorneys implicates "very strong public policy concerns for attorney accountability, and the need for public confidence in the justice system." *Doe v. Statewide Griev. Comm.*, 240 Conn. 671, 685, 694 A.2d 1218, 1224 (1997). "There are few more egregious acts of professional misconduct of which an attorney can be guilty than the misappropriation of client's funds held in trust." *Statewide Griev. Comm. v. Warren*, CV 990362750, 1999 WL 818605, at *4 (Conn. Super. October 1, 1999). (Citation omitted).

367. In this case, the Respondents did not merely overreach but egregiously betrayed the trust of their clients while engaging in activities that the Respondents knew were unjustified, unethical, and illegal.

368. The Koskoff Respondents, as aided and abetted by the Day Pitney Respondents, apparently felt entitled to take millions of dollars that did not belong to them.

369. In *Statewide Grievance Committee v. Terzis*, CV 950549822, (Conn. Super. Sept. 24, 1998), a Connecticut attorney was suspended for paying twenty-four electric bills totaling $2,039.37 from condominium funds while acting as president of the condominium. In his defense, the attorney "argued that he was too wealthy and successful to commit such acts." The court rejected such statements finding: "While the total amount may only be $2039.37, that cannot be deemed to be an insignificant sum of money. Id. at *3.

370. In *Disciplinary Counsel v. Smigelski*, 124 Conn. App. 81, 89-90, 4 A.3d 336, 342 (2010), the Appellate Court stated: "We agree with courts in other jurisdictions that have held that the fiduciary relationship between an attorney and a client requires absolute perfect candor, openness and honesty, and the absence of any concealment or deception." (citations and quotation marks omitted).

371. For all the foregoing reasons and facts, the Complainants respectfully ask the Grievance Committee to find there is probable cause to conduct a hearing or to take such other action as it deems appropriate.

ON BEHALF OF THE COMPLAINANTS,

LAW OFFICES OF HOWARD ALTSCHULER
Howard Altschuler, Esq.
21 Perkins Rd.
Bethany CT 06524
1-234-567-9897
Email: legalmalpractice@gmail.com
www.legal-malpractice.com

STATE OF CONNECTICUT

Michael P. Bowler
Statewide Bar Counsel

Frances Mickelson-Dera
Christopher L. Slack
First Assistant Bar Counsel

Tel: (860) 568-5157
Fax: (860) 568-4953

CERTIFIED
RETURN RECEIPT

STATEWIDE GRIEVANCE COMMITTEE

www.jud.ct.gov/sgc/
Second Floor - Suite Two
287 Main Street, East Hartford, Connecticut 06118-1885

CATHY M DATTILO ET AL
CO HOWARD ALTSCHULER ESQ
21 PERKINS ROAD
BETHANY CT 06524

03/05/2015

RE: GRIEVANCE COMPLAINT #15-0141
DATTILO vs. LICHTENSTEIN
NOTICE OF ASSIGNMENT

Dear Cathy M. Dattilo Et:

The grievance complaint which you filed against Attorney Joel H. Lichtenstein has been received and referred to the Fairfield Grievance Panel.

The Panel can be contacted, in care of its counsel, as follows:

Attorney Steven P. Kulas
12 BANK STREET, SECOND FLOOR
SEYMOUR, CT 06483
Telephone: (203) 881-8390

Please be sure to notify both the undersigned and the grievance counsel noted above of any change of address or of your telephone number during the pendency of proceedings on your complaint. You are not required to retain an attorney to represent you in connection with the grievance complaint. If you do, however, retain an attorney, please direct the attorney to file an appearance with the grievance panel and with the Statewide Grievance Committee.

If on the Complaint Against Attorney form you listed any persons having knowledge of the subject of the complaint, please request those individuals to submit in writing to the panel counsel indicated above any relevant information they have regarding your complaint.

If at any time you have any questions about the grievance procedures, please contact the undersigned or the grievance counsel listed above.

Sincerely,

Michael P. Bowler

cc: Attorney Joel H. Lichtenstein

STATE OF CONNECTICUT

Michael P. Bowler
Statewide Bar Counsel

Frances Mickelson-Dera
Christopher L. Slack
First Assistant Bar Counsel

Tel: (860) 568-5157
Fax: (860) 568-4953

STATEWIDE GRIEVANCE COMMITTEE

www.jud.ct.gov/sgc/
Second Floor - Suite Two
287 Main Street, East Hartford, Connecticut 06118-1885

CATHY M DATTILO ET AL
CO HOWARD ALTSCHULER ESQ
21 PERKINS ROAD
BETHANY CT 06524

03/12/2015

RE: GRIEVANCE COMPLAINT #15-0142
DATTILO vs. GALLANT
NOTICE OF REASSIGNMENT

Dear Cathy M. Dattilo Et:

Due to the inability of the Grievance Panel to investigate the above referenced grievance complaint which you filed, it has been returned to this office for reassignment. It has now been assigned to the N.H.JD GA7&Brnfrd,E.Havn,Guilfrd,Madisn,N.Brnfrd Griev.Panel.

The Panel can be contacted, in care of its grievance counsel, as follows:

Attorney J A. Rebollo
44 LYON TERRACE
BRIDGEPORT, CT 06604
Telephone: (203) 335-4905

Please be sure to notify both this office and the new grievance counsel noted above of any change of address or of your telephone number during the pendency of proceedings on your complaint.

Sincerely,

Michael P. Bowler

cc: Attorney Keith B. Gallant

Howard Altschuler

From: Georgetti, Michael <Michael.Georgetti@jud.ct.gov>
Sent: Wednesday, March 18, 2015 3:12 PM
To: Howard Altschuler
Cc: Bowler, Michael
Subject: RE: D'Attilo Grievances

Sensitivity: Confidential

Dear Attorney Altschuler:

As a result of a conflict of interest I returned this matter to the Statewide Grievance Committee. It will or has been assigned to another grievance panel.

Michael Georgetti

--

STATE OF CONNECTICUT
JUDICIAL BRANCH

NEW HAVEN J.D. FOR G.A. 7 AND THE TOWNS OF BRANFORD, EAST HAVEN, GUILFORD, MADISON & N. BRANFORD GRIEVANCE PANEL

J. Adrian Rebollo, *Grievance Counsel*

44 Lyon Terrace
Bridgeport, CT 06604
(203) 335-4905

March 19, 2015

Michael P. Bowler, Esq.
Statewide Bar Counsel
Statewide Grievance Committee
Second Floor-Suite Two
287 Main Street
East Hartford, CT 06118-1885

Re: DATTILO v. IANNANTUONI, Grievance No. 15-0143

Dear Attorney Bowler:

I am returning the above-referenced complaint. Would you kindly reassign same to another grievance panel.

Very truly yours,

J. Adrian Rebollo

JAR/as
Enclosure
cc. Rebecca Iannantuoni, Esq. (w/out enclosure)
Howard Altschuler, Esq. (w/out enclosure)

Frances Mickelson-Dera
Christopher L. Slack
First Assistant Bar Counsel
Tel: (860) 568-5157
Fax: (860) 568-4953

STATEWIDE GRIEVANCE COMMITTEE

www.jud.ct.gov/sgc/
Second Floor - Suite Two
287 Main Street, East Hartford, Connecticut 06118-1885

CATHY M DATTILO ET AL
CO HOWARD ALTSCHULER ESQ
21 PERKINS ROAD
BETHANY CT 06524

03/27/2015

RE: GRIEVANCE COMPLAINT #15-0142
DATTILO vs. GALLANT
NOTICE OF REASSIGNMENT

Dear Cathy M. Dattilo Et:

Due to the inability of the Grievance Panel to investigate the above referenced grievance complaint which you filed, it has been returned to this office for reassignment. It has now been assigned to the Stamford-Norwalk Grievance Panel.

The Panel can be contacted, in care of its grievance counsel, as follows:

Attorney Eugene J. Riccio
P.O. BOX 9118
BRIDGEPORT CT 06601
Telephone: (203) 367-7440

Please be sure to notify both this office and the new grievance counsel noted above of any change of address or of your telephone number during the pendency of proceedings on your complaint.

Sincerely,

Michael P. Bowler

cc: Attorney Keith B. Gallant

STATE OF CONNECTICUT
JUDICIAL BRANCH

FAIRFIELD JUDICIAL DISTRICT GRIEVANCE PANEL
Steven P. Kulas, *Grievance Counsel*

12 Bank Street
Seymour, CT 06483
(203) 881-8390

June 3, 2015

Mrs. Cathy M. D'Attilo
C/O Attorney Howard Altschuler
21 Perkins Road
Bethany CT 06524

RE: D'ATILLO V NASTRI:	Grievance #15- 0137
D'ATILLO V HORWITZ	Grievance #15-0138
D'ATILLO V BLOSS	Grievance #15-0139
D'ATILLO V KOSKOFF	Grievance #15-0140
D'ATILLO V LICHTENSTEIN	Grievance #15-0141

Dear Attorney Altschuler,

Enclosed please find the above Attorneys responses to the above grievance matters, if I require any further information I will contact you.

Very truly yours

Steven P. Kulas.

SPK/dak
Enc.

NUZZO &
ROBERTS, L.L.C.
L A W O F F I C E S

ANTHONY NUZZO, JR.
RICHARD A. ROBERTS
DAVID J. WEIL
JANE S. BIETZ
ROBERT J. CHOMIAK, JR.
NICOLE C. CHOMIAK
JANE M. CARLOZZI
MICHELE C. CAMEROTA
JENNIFER CAVALIER MOZZER
AMBER J. HINES
NADINE M. PARE
KEVIN C. HINES
JASON K. MATTHEWS
JAMES R. FIORE
STACEY L. PITCHER
KRISTIN K. MULLINS
KELLY B. GAERTNER
JAMES P. HENKE
LAURA M. KRITZMAN
SEAN E. BOYD
REGINA P. ARMON

June 1, 2015

HAND DELIVERED
Steven P. Kulas, Esquire
Fairfield Grievance Panel
12 Bank Street, Second Floor
Seymour, CT 06483

Re: D'Attilo v. Nastri; Grievance Complaint #15-0137
D'Attilo v. Horwitz; Grievance Complaint #15-0138
D'Attilo v. Bloss; Grievance Complaint #15-0139
D'Attilo v. Koskoff; Grievance Complaint #15-0140
D'Attilo v. Lichtenstein; Grievance Complaint #15-0141

Dear Attorney Kulas:

This response is submitted on behalf of the Koskoff, Koskoff & Bieder, PC Respondents, Kathleen Nastri, James Horwitz, Michael Koskoff, William Bloss, and Joel Lichtenstein ("KKB"). The Respondents, who have a combined total of 175 years of practice, have never been reprimanded or found by the Grievance Committee to have engaged in unethical conduct. All of them are well respected in the legal community.[1] Although believing this grievance is a complete fabrication, the Respondents take it very seriously.

This grievance complaint reiterates a pending civil complaint against the KKB firm and the individual Respondents. There are 17 code violations listed in the grievance complaint, without any allegations of particular violations by any of the individual Respondents based on any specific conduct. Indeed, with respect to most of the Respondents, the grievance complaint fails to allege any facts that, if true, would support any claim of an ethical transgression. For that reason alone, the grievance complaint should be dismissed with respect to Respondents James Horwitz, Michael Koskoff, William Bloss, and Joel Lichtenstein. With respect to Respondent Kathleen Nastri, the grievance makes only unsupported allegations that do not establish probable cause of any ethical violation, but are baseless tactical claims made to leverage the Complainants' position in highly publicized civil litigation. However, notwithstanding that the allegations of the grievance complaint are not well stated, the Respondents will attempt to address the various code provisions to the extent there is some narrative presented related to a potential violation.

This grievance arises from KKB's representation of the Complainants, Domenic and Cathy D'Attilo and their son, Danny, in connection with a complex medical malpractice action stemming from injuries suffered by Danny at birth, which resulted in cerebral palsy and significant, life-altering disabilities. The Complainants were represented by a team of KKB

[1] Also named in this grievance are Attorney Keith Bradoc Gallant and Rebecca Iannantuoni, attorneys from Day Pitney, who handled the post settlement probate and trust issues and acted as trustee for the trust set up for Danny.

ONE TOWN CENTER
P.O. BOX 747
CHESHIRE, CONNECTICUT 06410
TELEPHONE (203) 250-2000
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lawyers, primarily Kathleen Nastri and James Horwitz, who, with their staff, championed Danny's cause for nine years with the hope of securing the financial resources necessary for Danny's care. Working closely with the D'Attilos, the KKB lawyers fought for the D'Attilos through two trials, the first resulting in a hung jury and the second resulting in a $58.6 million verdict, and later a complex, multi-session mediation, ultimately securing a $25 million settlement with the doctor's insurance company, even though the insurance coverage was at most $4 million.

There is no doubt that the D'Attilos are good parents who love their son. It is also evident that this grievance and the identical lawsuit filed several months earlier is at most a fee dispute based on what the parties agreed to when KKB was retained in 2003 and likely stems from the D'Attilos' frustration in not having unfettered control over the settlement money placed in a trust for the benefit of Danny, which trust was created by Attorney Gallant, who advised the D'Attilos on the post settlement probate issues.

The Complainants' current lawyer, Howard Altschuler, has constructed a fictional storyline based on the premise that KKB took advantage of the D'Attilos by making them believe that KKB was entitled to a much higher fee than the fee agreement provided for and thereafter, conspired to cover up this fraud. Attorney Altschuler spent a lot of time casting KKB in a negative light with accusations of fraud, conspiracy and theft of millions of dollars, but little time explaining how the claims are supported by evidence. Instead, this elaborate story is built on email excerpts twisted out of context, misstatements of law and unsupported speculations and conclusions. It will be evident to the panel that the Respondents were the Complainants' zealous advocates for nine years. What really happened is that:

- The D'Attilos had an independent lawyer who negotiated a 28% fee, which they understood when they signed the fee agreement and when the case settled;
- KKB would never have agreed to, and did not agree to, accept this complex case for a fee based on the statutory sliding scale;
- KKB had nothing to hide as the fee was proper and agreed to and indeed, never tried to hide their fee, filing the settlement statement noting the 28% fee with the Norwalk-Wilton Probate Court the day after the settlement;
- The D'Attilos moved, changing probate districts, because they wanted to leave Norwalk for personal reasons, including less notoriety of the fact that they came into money and to be in a more favorable probate jurisdiction that would allow them a bigger allocation of the settlement and more control over the trust; and
- After consultation with a tax expert, KKB determined that there was no taxable event and therefore, the release did not need to be amended.

SUMMARY REVIEW OF CLAIMS

Central to the Complainants' claim that the KKB lawyers violated the Rules of Professional Conduct is a belief that KKB agreed to accept a complex medical malpractice case by reducing their fee from 33⅓% to the amount it would receive under the statutory sliding

scale in General Statute §52-251c.[2] (Gr. Compl. ¶ 18) If this panel finds that it is not probable that KKB agreed to a reduced fee based on the sliding scale, but agreed to a 28% fee, then the claims of fraud, theft and conspiracy under Rule 8.4, conflict of interest under Rule 1.7 and Rule 1.8, and the reasonableness of KKB's fee under Rule 1.5, should be dismissed since KKB rightfully earned a contingent fee of 28%.[3]

To this end, no evidence has been presented to support the Complainants and their counsel's interpretation of the fee agreement. Instead, this carefully crafted grievance complaint is designed to mislead the panel so as to provide illusory support for their claims. For example, Attorney Altschuler does not tell the panel that an independent counsel, who negotiated the fee for the D'Attilos, **does not confirm** that he negotiated a fee based on the statutory sliding scale. In fact, all the D'Attilos' independent lawyer states is that he asked the firm to "discount the fee to the D'Attilos." (Ex. 1) Likewise, the D'Attilos **do not confirm** that they agreed to a fee based on the statutory sliding scale. Instead, they "remembered that 28% was somehow part of the [retainer] Agreement." (Gr. Compl. ¶ 55)

KKB did agree with the D'Attilos' independent counsel to modify their fee from 33⅓% to 28%. KKB also agreed that because the fee statute in effect when the D'Attilos signed the agreement did not have a waiver provision, KKB's 28% fee would be due as long as the contingency fee statute in effect at the time the funds were disbursed contained a wavier provision. And in fact, in 2012 when the funds were distributed, the fee statute in effect did contain a waiver provision. Likewise, the 28% fee charged and collected by KKB from the D'Attilos was reasonable.

Moreover, the Complainants allege that KKB conspired with the Day Pitney lawyers to hide the fact that the fee charged should have been based on the sliding scale. This is not true. The day after KKB negotiated a settlement of $25 million, KKB filed papers in the Norwalk-Wilton Probate Court knowing that both the court and the Guardian ad Litem who would be appointed for Danny would review the terms of the settlement to include the fees agreed on and paid.

Contrary to the allegations of the grievance complaint, transfer of the case from the Norwalk-Wilton Probate Court to the Northern Fairfield County Probate Court had nothing to do with hiding the terms of the 2003 fee agreement. Instead, the D'Attilos wanted to present the settlement to a probate judge who may be more sympathetic to the extraordinary effort that Daniel's parents made for their son, as the day to day caretakers, so there would be more flexibility for the parents to use some of the trust funds as they determined and ask for a higher allocation of funds for themselves. The D'Attilos also wanted a better home for their son and to move away from the notoriety that they came into money. However, over time, the D'Attilos observed that they did not control their

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[2] Based on a recovery of $25 million, the fee under the sliding scale would be about 11%. Under the sliding scale, the fee for anything over 1.2 million is 10%.

[3] However, as discussed later (p. 7), the panel need not reach this issue to resolve this grievance because there is no credible evidence that KKB intended to deceive the D'Attilos as to the meaning of the fee agreement.

son's trust funds. Having difficulty with this relationship, the D'Attilos changed lawyers and trustees several times; substituting who they felt would allow them more control over the funds. When these changes were not satisfactory, they moved to terminate the trust.[4]

Given this undisputed history, there was no "conspiracy" by KKB and Day Pitney to hide the terms of the fee agreement. Therefore, there is no violation of Rule 8.4 (Misconduct), Rule 1.7 or Rule 1.8 (Conflicts) or Rule 1.5 (Fees). As to the remaining claimed code violations, as summarized in paragraph 360 of the grievance complaint, there is no evidence of misconduct. However, it is clear that Complainants' intention was to package as many professional code violations as possible in the hopes that the panel will believe that with so many violations alleged, something bad must have happened and that there must be misconduct. (Gr. Compl. ¶ 360)

CONTINGENCY FEE STATUTE

At the center of this dispute is General Statute § 52-251c, which places limits on contingency fees in personal injury cases. The Complainants maintain that KKB was not entitled to a 28% fee and that the fee did not comply with § 52-251c. In order for the panel to evaluate this claim, a brief overview of the contingency fee statute and its history is necessary.

In 1986 Connecticut passed its version of a "Tort Reform Statute," which set a statutory cap on attorneys' fees in personal injury cases. The statute was amended several times prior to 2003, when the D'Attilos retained KKB. The 2003 version of the statute, which was revised in 1991, did not provide that the client could waive the fee scale but also placed no restrictions on a client's ability to negotiate a different fee agreement. (Ex. 3) In 1993, 10 years before the D'Attilos signed the fee agreement with KKB, in the case of In re Estate of Salerno, 42 Conn. Supp. 526 (1993), Judge Vertefeuille, later Justice Vertefeuille, held that a client could opt out of the fee scale of § 52-251c, without requiring any specific conditions, because the statute protected a "private right" that could be waived.[5] (Ex. 4)

Indeed, it was and is common practice for plaintiff's attorneys handling complex personal injury cases to negotiate fees outside the statutory fee scale due to the difficulty of the cases, the risks presented and the tremendous upfront expense involved. In 2005, two years after the D'Attilos signed their fee agreement, the fee statute was again modified to accommodate this practice and the court's holding in Salerno.[6] (Public Act 05-275) The new statute specifically included a provision allowing the fee scale to be waived but not to exceed 33⅓%. It also added a condition that the waiver be in writing, and specified the

[4] On April 16, 2015, the Northern Fairfield Probate Court granted a motion to terminate the trust. (Ex. 2)

[5] The court in Salerno noted that in the legislative history from the passage of the original statute that it was conceded by proponents of the bill that the sliding scale could be waived.

[6] The Legislative History reflects a recognition of the Salerno holding and that plaintiffs already could opt out of the statutory fee scale. (Ex. 6)

requirements for a valid waiver and the consequences for seeking a contingency fee that exceeds the statutory scale without a valid waiver.

The 2005 Public Act amending the statute specifically states that the statute was **"[e]ffective from passage [July 13, 2005]" and applicable to causes of action *accruing on or after* said date.**" (Ex. 5) Therefore, the 2005 statute and its new requirements did not apply to the underlying case because Danny's injury occurred in February 2003.[7] However, notwithstanding the clear language in the 2005 legislation, counsel maintains that KKB was entitled to no fee because they did not comply with the 2005 version of § 52-251c since they did not obtain a written waiver from the D'Attilos at the time of settlement. (Gr. Compl. ¶¶ 279-283, 300 and 357)

Attorney Altschuler bases this claim on the flawed premise that the relevant "cause of action" is KKB's request for approval of a 28% fee made to the Probate Court on January 12, 2012. (Gr. Compl. ¶¶ 71-78, 279) That is simply not true. It is clear that the statute and its requirements do not apply to the execution of a settlement statement at the end of a case, but to the underlying personal injury case and resulting fee agreement. Here, the personal injury action accrued in February 2003, as a result of the injuries to Danny at birth. At the time the D'Attilos signed the 2003 fee agreement, which was negotiated on their behalf by another attorney, the 2005 statute was not in effect, and the law was such that any plaintiff could opt out of the fee scale without any specific requirements for doing so, which is what happened here.

KKB'S INTAKE PROCESS

In 2003 and still today, as part of KKB's intake process for a potential medical malpractice case, Attorney Joel Lichtenstein conducts the initial investigation to assess a potential claim. Not all possible claims are accepted by KKB because of the uncertainty of the outcome and prohibitive costs, especially for experts that will need to be hired. Attorney Lichtenstein, along with his nurse paralegal, review the medical records, consult with medical experts to determine if there is probable cause to bring an action and the likelihood of success, and then he, with input from his partners, decides whether to take the case and commence a lawsuit.

Attorney Lichtenstein initially speaks with and/or meets with the potential clients to discuss the factual background, as well as KKB's investigation process, the need to obtain an opinion from a physician that there has been malpractice before filing suit, that costs will be paid by KKB and only reimbursed if they are successful either through trial or settlement, and KKB's fee. Regarding the fee, it has always been KKB's policy not to accept complex medical malpractice cases based on the statutory fee scale (§ 52- 251c) because of the uncertain outcome and significant upfront costs involved. When Attorney Lichtenstein

[7] As will be discussed below, the 2005 version is only relevant to the extent that it was the 2005 version of the statute specifically allowing for a waiver of fees that triggered KKB's fee under the fee agreement.

discusses the fee with potential clients, his practice is to explain that there is a statutory scale/cap but because of the time involved and complexity of malpractice cases, they will not take cases based on the statutory scale and that there is case law permitting them to negotiate a different fee. See In re Salerno, supra. In 2003, KKB had two form fee agreements: one form used when there is a referring attorney and one where there is not. Both forms provide for a fee of 33⅓% and a waiver of the statutory sliding scale. A proposed fee agreement and authorization to obtain medical records is sent to potential clients in order to start the investigation.

HISTORY

This grievance complaint is based on misleading and often false factual allegations. The following is a recitation of what took place during KKB's over nine year representation of the D'Attilos based on the best recollection of the KKB attorneys and documentary evidence.

Negotiating and Signing of Fee Agreement: February 23 – March 21, 2003

The D'Attilos first contacted KKB around February 24, 2003 regarding a potential new case while Danny was still in the hospital. (Ex. 8) Soon after, Attorney Lichtenstein and his nurse paralegal at the time interviewed the D'Attilos (likely by phone). (Ex. 9) By letter dated February 28, 2003, the nurse paralegal sent Mrs. D'Attilo a letter enclosing blank authorizations for her to execute and KKB's form fee agreement providing for a contingent fee of 33⅓% and a referring attorney based on their understanding at the time that there was a referring attorney. (Ex. 10)[8]

On March 5, 2003, six days after KKB sent their standard fee agreement to the D'Attilos, Domenic D'Attilo advised KKB that they wanted to move forward with obtaining the medical records. (Ex. 11) At some point after, Attorney Mark Greany contacted KKB and likely spoke to Attorney Lichtenstein.[9] Thereafter, on or around March 12, 2003, Attorney Greany spoke to Attorney Koskoff. (Ex. 12)[10]

Attorney Greany asked for a reduction of the 1/3 fee and also asked about the statutory sliding scale, which at the time did not have a waiver provision. Attorney Koskoff told Attorney Greany that his firm could not accept the D'Attilos' case based on the sliding scale because the case was too complex and costly.[11] Attorney Koskoff told Attorney Greany that the statute did not prohibit the negotiation of a different fee and that in 1993, the court in

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[8] Due to an auto date function in this particular document, the date updates when printed.

[9] Attorney Lichtenstein recalls speaking to Attorney Greany regarding KKB's fee and would logically have been the one to initially do so because Attorney Lichtenstein handles the intake of new medical malpractice cases.

[10] This Exhibit is a contemporaneous note written by Attorney Koskoff on March 12, 2003 when he was in contact with Attorney Greany.

[11] Although KKB has accepted some tort cases based on the sliding scale, they would not have done so in a difficult medical malpractice case like this.

Salerno, supra, stated that a client may waive the statutory fee for complex cases, even though the fee statute did not contain a waiver provision.

Notwithstanding the case law, Attorney Greany expressed a concern about including a waiver provision in the fee agreement when it was not specifically provided for in the statute. Attorney Koskoff was confident that a waiver provision would be added in a future version of the statute, and he advised Attorney Greany of this. He explained that a modification to the statute to specifically allow for a waiver of the sliding scale had been in the works, which he knew based on KKB's participation in the CTLA.[12] Attorney Koskoff and Attorney Greany discussed and agreed that the D'Attilos would pay KKB 28% of any recovery, if at the time the funds were disbursed, the present statute was amended to contain a waiver of the statutory sliding scale.

Based on this agreement, Attorney Koskoff revised the KKB standard fee agreement previously sent to Mrs. D'Attilo by: 1) moving the statutory fee scale from Exhibit A to Paragraph II; 2) deleting the Waiver Paragraph in Paragraph III; 3) changing the fee for recovery from 33⅓% to 28%, and 4) adding:

> **If that statute is not in effect at the time money is to be distributed to the client KKB shall receive fees of twenty eight percent (28%) of the total recovery.**

At no time did Attorneys Koskoff and Greany agree that KKB would modify the fee for the D'Attilo case from 33⅓% to the statutory sliding scale.

On March 13, 2003, KKB sent Attorney Greany the revised agreement and asked that he have the D'Attilos sign and return it to KKB. (Ex. 13) On March 21st the D'Attilos met with Attorney Lichtenstein and his paralegal to sign the fee agreement. At that time, KKB could reasonably assume that Attorney Greany had already reviewed the agreement with the D'Attilos, since he was obligated to do so. Wooten v. Heisler, 82 Conn. App. 815, 822 (2004) (attorney has obligation to provide advice on legal and non-legal matters that are relevant to client's situation); Rules of Prof. Conduct, Rule 2.1 cmt.[13] However,

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[12] KKB, through its participation in the activities of the Connecticut Trial Lawyers Association (CTLA), was aware of the lobbying efforts to get a waiver provision added to the statute. Attached is an excerpt from a report dated June 24, 2003 of the organization's 2003 lobbying efforts with respect to the waiver issue under the "Medical Malpractice" section. (Ex. 7) It was through this involvement that when this fee agreement was negotiated and later reviewed with the D'Attilos that KKB could say with some authority that the statute would be changed in the near future to provide specifically for a waiver of the sliding scale.

[13] An attorney's duty to advise a client in connection with a matter is discharged when the client retains independent counsel to advise the client on the matter. Ferguson v. Yaspan, 183 Cal. Rptr. 3d 83, 93-94 (Ct. App. 2014) (requirement that attorney fully advise clients about transaction with attorney was discharged by independent counsel that clients retained to advise them); see State ex rel. Oklahoma Bar Ass'n v. Combs, 175 P. 3d 340, 350 (Ok. 2007) (finding no violation of Rule 1.8 (h), in part, because clients were represented by independent counsel). The obligation instead

as was Attorney Lichtenstein's practice, he also reviewed the terms of the revised fee agreement with the D'Attilos, including the sliding scale and the fact that case law permitted clients to opt out. He also discussed with the D'Attilos his expectation that the statute would be amended soon to permit a waiver and that assuming that happened, KKB's fee would be 28%, a reduction from their normal 33⅓%, and that this is what the fee agreement provided for. The D'Attilos agreed and signed the fee agreement and authorizations to obtain medical records. (Ex. 14)

Notwithstanding the documentary evidence that shows the history of how the agreement was created, it is claimed that Attorney Greany was not acting as the D'Attilos' attorney when negotiating the fee agreement with KKB and that all that was agreed to was that KKB would accept the statutory sliding scale. (Gr. Compl. ¶ 18) This is not true.

First, it appears that Attorney Altschuler contacted Attorney Greany, who now lives in California, regarding his role. Attorney Greany emailed Attorney Altschuler on March 2, 2015, stating only that **he asked KKB to discount its fee.** (Ex.1) Attorney Greany has **not stated** that KKB agreed to accept the statutory sliding scale. Apparently, Attorney Altschuler did not provide this email to the panel at anytime including when the corrected grievance complaint was filed around March 18, 2015.

In addition, although Attorney Greany may not recall the entire history of these events many years after they occurred, the evidence demonstrates that he did act as the D'Attilos' attorney, albeit in the limited capacity of negotiating the fee agreement. All that is needed to create the attorney client relationship is the seeking or giving of legal advice. DiStefano v. Milardo, 276 Conn. 416, 422 (2005).[14] Here, the D'Attilos admit that they showed Attorney Greany the fee agreement that was initially sent to Mrs. D'Attilo. (Amended Complaint, ¶ 20 (Ex. 15); Gr. Compl. ¶ 18) In doing so, there should be no question that the D'Attilos were seeking the advice of Attorney Greany regarding the fee agreement. Thereafter, Attorney Greany acted on behalf of the D'Attilos when he contacted KKB and negotiated the terms of the fee agreement. Indeed, in the civil case, Judge Frechette construed the civil complaint as alleging that the plaintiffs had independent counsel (Attorney Greany) who reviewed the retainer agreement for the D'Attilos. D'Attilo v.

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falls on independent counsel, who has a duty to exercise a reasonable degree of care, skill and diligence in counseling the client. See Yaspan, supra, 183 Cal. Rptr. 3d 83 at 93-94; Mallen & Smith, *Legal Malpractice* (2015 ed.) § 5:47, at 577.

[14] In addition, neither the payment of a fee nor a formal retainer agreement is necessary to create an attorney-client relationship. See Mallen & Smith, *Legal Malpractice* (2015 ed.) § 8:12, at 993-96, 998; see also Doucette v. Dlugolecki, 2006 WL 2709456, at *2 (finding attorney-client relationship where tenant had single telephone call with attorney in which attorney provided legal advice). It is also not dependent on the amount of time a party spends with the attorney or the number of communications he or she has with the attorney. See id. (finding attorney-client relationship based on single call); Caro, 2011 WL 1565976, at *3-*4 (finding attorney-client relationship where attorney had one 20 minute meeting with party).

Koskoff, Koskoff & Bieder, 2015 WL 1867335, *4-5 (Mar. 26, 2015) (Ex. 16) Accordingly, whether as a favor or otherwise, Attorney Greany was acting on behalf of the D'Attilos when he negotiated the fee agreement, binding the D'Attilos to the agreement, and obligating him to explain the terms of the agreement to the D'Attilos. See Wooten v. Heisler, supra.

Moreover, it is evident from the revisions in the executed March 2003 fee agreement that there was more to the negotiations than Attorney Greany simply asking for a discount in the fee. If that were all that was discussed, then the only modification that was necessary to the standard fee agreement sent to Mrs. D'Attilo on February 28, 2003 was to change the fee amount. However, multiple changes were made to include adding, **"If that statute is not in effect at the time money is to be distributed to the client KKB shall receive fees of twenty eight percent (28%) of the total recovery."** Furthermore, if, as is alleged in the grievance complaint, Attorney Greany and KKB agreed that KKB would accept this complex medical malpractice case for the sliding scale, there would be no reason to add this language at all. (Gr. Compl. ¶ 18) Indeed, **the D'Attilos admit in the grievance complaint that they recalled 28% being part of the agreement, which contradicts the notion that KKB agreed to the sliding scale.** (Gr. Compl. ¶ 55)

To the extent it is suggested that the fee agreement language "if that statute is not in effect" referred to the complete repeal of the sliding scale statute (§ 52-251c) meaning, only if there no longer existed a statutory fee scale would KKB be entitled to a 28% fee, this is not true. At no time did Attorneys Koskoff and Greany discuss or agree that the KKB fee of 28% was only due if §52-251c was abolished at the time funds were distributed. Moreover, this is a completely unreasonable interpretation of the fee agreement. As Attorney Altschuler points out in the grievance complaint, the legislature was not going to repeal a law that was specifically designed to protect clients from overreaching attorneys and had been in effect since 1986. (Gr. Compl. ¶¶ 107; 361) KKB would not have negotiated a fee based on this impossibility. Instead, they negotiated a fee based on the knowledge that a change to the fee statute to specifically allow for a waiver would likely occur by the time the potential lawsuit concluded to appease Attorney Greany's concerns.

Although the agreement between Attorney Koskoff and Attorney Greany was that if § 52-251c were amended to include a waiver provision, the fee would be 28%, admittedly the fee agreement does not specifically spell this out. However, a fee agreement must be construed to effectuate the intent of the parties, and in doing so, the circumstances connected with making the agreement must be considered. ARB Const., LLC v. Pinney Const. Corp., 75 Conn. App. 151, 154 (2003).[15] Here, when you piece together the changes made to the agreement coupled with the discussions between Attorney Greany and Attorney Koskoff and the D'Attilos' admission in their grievance complaint that they recalled 28% being part

[15] "In arriving at the intent of the parties to a contract as expressed or implied in the language used by them, it is always admissible to consider the situation of the parties and the circumstances connected with the transaction, and every part of the writing should be considered with the help of that evidence." Foley v. Huntington Co., 42 Conn. App. 712, 730 (1996).

of the agreement, it is evident that the contemporaneous agreement between the D'Attilos through Attorney Greany and KKB was that the D'Attilos agreed to a 28% fee, which would be triggered if § 52-251c was amended to include a waiver provision. Again, if the intent of the parties was to simply agree to the sliding scale, then the language related to the 28% would have been unnecessary, but it was specifically added into the agreement.

Attorney Altschuler stakes his claim based on his reading of the fee agreement more than 11 years after the document was signed. He leaves no room for any other meaning of the words **"If that statute is not in effect at the time money is to be distributed to the client KKB shall receive fees of twenty eight percent (28%) of the total recovery."** He does not embrace that all that was intended by the added language was to identify the different versions of the statutes to reflect the agreement made with Attorney Greany. Specifically, that KKB's 28% fee would be paid if **that** statute in effect at time the agreement was signed was revised to contain a waiver provision when the funds were paid. See Parnoff v. Yuille, 139 Conn. App. 147, n.13. (2012) (using "in effect at the time" to refer to an earlier version of § 52-251c and not a repeal of the statute).

KKB has no doubt that Attorney Koskoff and Attorney Greany agreed that KKB's fee would be 28% and that the D'Attilos understood this and agreed to this when they signed the fee agreement. If, however, the panel does not wish to reach this issue and instead chooses to leave it for the arbitrator to decide in the civil case, there can be no ethical violation unless there is probable evidence that KKB intended to deceive the D'Attilos as to the meaning of the fee agreement. The above history demonstrates that this was clearly not the case based on KKB's understanding of what was agreed to. And other than unsupported allegations and conspiracy theories, the Complainants have presented no evidence to prove otherwise.

Initial Investigation of Potential Claim: March 21, 2003 – January 2005

After the fee agreement was signed, KKB began its investigation. After spending a year consulting with multiple doctors who were not able to determine that there was malpractice, in July 2004, KKB initially informed the D'Attilos that they would not take their case. Notwithstanding Danny's severe disabilities, based on its investigation and discussions with multiple doctors, KKB felt that it would be a very difficult case to win. However, because of sympathy for the D'Attilos' difficult circumstances and believing that there was likely a medical error resulting in Danny's cerebral palsy, KKB reconsidered, consulted with additional doctors, and notwithstanding their continued belief that it would be a very difficult, expensive and time consuming case to win, filed suit against Stamford Hospital, Dr. Viscarello and his practice in January 2005.

Early Representation: February 2005 – February 2009

It was not until after the lawsuit was filed that the case was assigned to Attorney Nastri. She was not working at KKB at the time the D'Attilos signed the fee agreement. Attorney Horwitz did not become involved in the case until approximately the fall of 2008. Once suit

was filed, Attorney Nastri, on behalf of the D'Attilos, and the attorneys for the doctor and hospital engaged in discovery. Experts were disclosed and depositions were taken. Trial was scheduled to begin in March 2009.

It is repeatedly suggested throughout the grievance complaint that the D'Attilos simply followed the advice of KKB; that they were not involved in the litigation during its nine year history; and that they just did whatever KKB told them to do. This illusion was presented to the panel to give the impression that the D'Attilos were more susceptible to KKB's fraudulent behavior. This is not true. Throughout the nine years KKB represented the D'Attilos, they were kept informed and were very engaged and hands on. Even early on the D'Attilos were in regular contact with KKB, seeking updates, obtaining copies of records KKB discovered and of deposition transcripts, and discussing settlement and strategy. (See, i.e., Ex. 17)

For example, in June 2006, Attorney Nastri recommended filing offers of judgment of $4 million against Dr. Viscarello and his practice and $5 million against the Stamford Hospital. (Ex. 18) Pursuant to the D'Attilos instructions, she instead filed an offer of judgment of $4 million against Dr. Viscarello and his practice but one for $8 million against Stamford Hospital. (Ex. 19) Notably, any time settlement was discussed with the D'Attilos, it was Attorney Nastri's practice (and later Attorney Horwitz's) to discuss with the D'Attilos what they would receive after lawsuit costs and KKB's fee. Attorney Nastri, not being involved in negotiating the fee agreement and understanding KKB's policy of requiring a 33⅓% on complex medical malpractice cases, assumed the fee was 33⅓% up until approximately November 2011, when she first saw the 2003 agreement.

On July 11, 2008, Attorney Nastri met with the D'Attilos at their house to discuss the case. A few days later, Cathy D'Attilo emailed Attorney Nastri thanking her for coming to their house and going over everything with them and asking that she consider speaking to certain treaters who cared for Danny right after he was born and stating, **"I don't want to go through this case with any regrets...we just want to make sure no stone is left unturned."** (Ex. 20)

Similarly, in December 2008, after concluding that there was no viable claim against Stamford Hospital, Attorneys Horowitz, Koskoff, and Nastri met with the D'Attilos to obtain their authority to withdraw the case against the hospital. (Ex. 21) This was a big step, since the hospital's coverage was substantial, while Dr. Viscarello's insurance coverage was limited. To enhance the chance of collecting a judgment in excess of this limited coverage, Attorney Nastri suggested making a time-limited demand against Dr. Viscarello and his practice for the policy limits. She assumed such an offer would be rejected, and thus, provide a building block for a potential bad faith claim against the doctor's insurance company. However, KKB had to make sure that the D'Attilos understood that if the offer were accepted, they would be bound to accept the available insurance in full satisfaction of their claim. After extensive discussion with the D'Attilos, Attorney Nastri made the demand, which was rejected. (Ex. 22)

Mistrial and Preparation for Second Trial: March 2009 – February 2011

Jury selection in the first trial started on March 17, 2009. Evidence began on April 15th, and lasted almost a month, with jury deliberations starting on May 14th. While the jury was deliberating, on May 27th counsel for Dr. Viscarello offered $1 million, which the D'Attilos rejected. The next day, the court declared a mistrial as the jury could not reach a verdict.

After the mistrial, KKB filed a motion for an immediate trial and began to prepare for the second trial. Also during this time, in consultation with the D'Attilos, KKB made an ongoing effort to resolve the case.[16] However, the D'Attilos, who were closely involved with every strategic decision, made it clear that they no longer were interested in settling for the policy limits. In a September 23rd email Mrs. D'Attilo wrote:

> It has been my understanding that the offer on the table at this time is still ONLY the policy limit. $2,000,000.00. **After all deductions have been made the balance of the policy has been chipped away to very little in the end.**...I am so disheartened by the whole legal system, everyone has profited from my son's injuries, except for Daniel. If we settle, then your company as well as everyone else will have profited and get to move on...your firm gets to move on...to other cases, and everyone gets to close 'the file.'...You see the longer this case goes on, Dr. Viscarello doesn't get to move on either. So yes we are ok with waiting, we are ok with years of this because we have nowhere to run anyway....We know in our hearts you have fought for us with all your heart. And we believe you can bring even more to the table going to court on round two. **So at this time we ask that you please respect our wishes on this matter and know we are willing to roll the dice win or lose, appeal after appeal if need be.**

(Emphasis added) (Ex. 23) Mrs. D'Attilo reiterated this position in a September 28th email to Attorney Nastri and Attorney Horwitz, where she advised that there were to be no further discussions about settling the case for the $2 million policy limits, that she and Domenic wished to go to trial and that KKB was only to bring them new settlement offers:

> Please understand that we are just trying to do what is [in] the best interest of our son, and we want to take a more active role going forward. We only get one more chance at this, and we don't want to have anything missed. Kathleen, I have several questions I would like to go over with you when you are available to meet.

(Ex. 24) On March 8, 2010, Attorney Nastri and Attorney Horwitz met in person with the D'Attilos to go over several issues, including the formal $2 million policy limits offer by

[16] On June 24th the doctor rejected a $9.1 million demand and advised that there would be no counter offer. This demand was based on, among other things, the accruing offer of judgment interest and preliminary conversations with the jurors after the mistrial.

counsel for the doctor. (Ex. 25) The D'Attilos authorized KKB to reject the offer with no counteroffer. After this meeting, Mrs. D'Attilo requested a copy of Dr. Viscarello's insurance policy as well as a summary of the litigation costs. By letter dated March 9, 2010, KKB forwarded the requested information to the D'Attilos. (Ex. 26)

After an unsuccessful mediation on June 10, 2010, there were ongoing discussions with the D'Attilos regarding their desire to go after Dr. Viscarello personally and file a prejudgment remedy application (PJR) against him to secure his assets if a judgment came in over the policy limits. In a June 14th email, Mrs. D'Attilo wrote to Attorney Nastri in follow up to their June 11th conversation:

> ...I would like to further explore our options. ...I would like to know if there is any way in which we can go after Dr. Viscarello personally, and make a demand directly to him.... I am upset ... that Dr. Viscarello is not retaining any personal counsel...if any verdict is rendered in our favor, I... intend to go ... after the doctor personally in addition to his business...Is there any way we can get our trial to be moved up...this case and our son's disabilities have left us penniless.... If there is a status conference Domenic and I would like to attend this time. Domenic spoke with Jim as well on 6/11/10 and he told Domenic that if we win he would rather pursue a bad faith claim...than go after Dr. Viscarello, why is it we can't do both??? Thank you again, Kathleen for all your efforts.

(Ex. 27) Thereafter, KKB continued to look into a potential bad faith claim and also referred the D'Attilos to Attorney Howard Ignal, who made a PJR application on behalf of the D'Attilos. Although the court held a hearing, the court never issued any order granting or denying the application.

Based on the above history, the D'Attilos were not simply naively following the advice of their attorneys, vulnerable to being taken advantage of, but were instead, hands on and very involved in the progression of the case, understood the settlement process and that fees and costs would reduce the amount Danny would receive from any judgment or settlement.

Second Trial and Post Verdict: March 2011 – October 2001

Jury selection for the second trial started on March 29, 2011. Evidence started April 27th and lasted approximately four weeks. On May 25th, the jury returned a verdict of over $58.6 million. The D'Attilos were delighted, giving various interviews regarding their ordeal and the verdict. (Ex. 28) KKB and especially Attorney Nastri and Attorney Horwitz were obviously very pleased as well, not only on a professional level but also on a personal level because their clients had been struggling both financially and emotionally since Danny's birth.

After the verdict came the equally difficult task of collecting on the judgment in excess of the disclosed $2 million policy limits. To that end, KKB continued to look into a potential

bad faith claim against the doctor's insurance company and hired an insurance coverage and bad faith expert to assist them in their efforts.[17] Ultimately the parties agreed to mediate, with a preliminary conference scheduled for October 3rd and initially two mediation sessions scheduled for November 3rd and 22nd. Attorney Nastri and Attorney Horwitz, with the assistance of Attorney Koskoff and Attorney Bloss, began working on a mediation position statement and presentation to the mediator.

Also during this time, at the request of the D'Attilos, KKB looked into possible litigation loans for the D'Attilos. Ultimately, they decided on Lawsuit Funding Solutions. As with many of the other allegations in the grievance complaint, Attorney Altschuler questions, without any basis whatsoever, whether KKB has some kind of financial interest in Lawsuit Funding. It does not, nor is there any possible suggestion of this in the records. This loan was of no benefit to KKB and was only to help the D'Attilos, who were in a dire situation until a settlement could be reached. They were seeking immediate relief and since their house was in foreclosure would not be a candidate for any type of traditional loan. The D'Attilos did not seek advice from KKB concerning their decision to arrange for advances of high-interest loan proceeds at the rate of $20,000 per month.

Initial Mediations

The first session of the mediation took place on November 3, 2011. That night, Attorney Nastri spoke to Mr. D'Attilo regarding the mediation and to advise him that the mediator wanted to meet with him and Mrs. D'Attilo. (Ex. 29) The D'Attilos, Attorney Nastri and Attorney Horwitz met privately with the mediator on November 18th and the second session of the mediation took place on November 22nd. By the end of the day, the insurer had offered $18 million. Another session was scheduled for January 11, 2012.

Review of Fee Agreement: November 2011 – December 2011

In connection with the ongoing settlement discussions and with the knowledge that the case would likely resolve at the next mediation session, Attorney Nastri and Attorney Horwitz had discussions with the D'Attilos about settlement numbers and again what they would receive after costs and attorney's fees were paid. Sometime before November 29th Attorney Nastri and Mrs. D'Attilo discussed the terms of the fee agreement. Both Attorney Nastri and Attorney Horwitz had been under the impression that KKB's fee was 1/3 based on KKB's prior practice for medical malpractice cases and in fact, whenever they discussed settlement with the D'Attilos, Attorney Nastri and Attorney Horwitz always referred to their fee as being 1/3.

It was not until the fee agreement was pulled that Attorney Nastri saw that it was not KKB's customary agreement and that it provided for a 28% fee. On November 29, 2011, Attorney

[17] During this time, post trial motions were filed by the doctor's counsel and KKB.

Nastri spoke to Mrs. D'Attilo regarding the status of negotiations and the fee agreement. This conversation was memorialized in an email from Attorney Nastri to her partners:

> Just got off phone with Kathy D. told her there had been no progress/news on the settlement negotiations; that the last we knew $18 million was the limit of the authority. I told her we were hopeful that there would be an increase in the offer...**I also told her that she was correct and that I was wrong about the fees when I assumed all along it was 1/3**. I told her they had negotiated a 28% fee, which would save Danny close to a million dollars if the case settled for $18 million. I also told her that she did not need to worry about the language in the fee agreement that it does not cover our work after the verdict; that we were continuing to work under the terms of the original fee agreement, and were not looking for any change/increase based on work since the verdict. **She seemed to understand both the settlement status and the fee agreement.**

(Emphasis added.) (Ex. 30) What is critical regarding this email and in complete contrast to the statements made in the grievance complaint is that there is no doubt that: (1.) the D'Attilos had in their possession a copy of the fee agreement at least as of November 29th (but likely sooner since they obviously questioned the 1/3 fee mentioned); (2.) The D'Attilos questioned whether the fee was 28% or 33⅓%; and (3.) The D'Attilos reviewed it sufficiently enough to be concerned that KKB's post verdict efforts would cause an increase in the agreed to 28% fee. This close attention by the D'Attilos was consistent with their prior hands on conduct throughout the litigation.[18]

The D'Attilos continued to have questions about the fee agreement, which they discussed in additional conversations with Attorney Nastri between November 29th and January 4th, prior to the last mediation session scheduled for January 11th. Contrary to the allegations in the grievance complaint, rather than trying to trick or confuse the D'Attilos, Attorney Nastri wanted to be sure that they understood the fee agreement that they had previously signed many years earlier because they were getting close to settling the case. To make a decision, they would need to understand how much they would receive after costs and attorneys' fees were deducted.

Also during the time, in addition to discussing the fee agreement, Attorney Nastri discussed generally with the D'Attilos that because Danny was a minor, the Probate Court would need to approve the settlement and what was done with Danny's money and that they would need to hire an attorney to handle these issues. Attorney Nastri also strongly recommended to the D'Attilos a structured settlement (that is, a deferred payment, such as by an annuity) for part of the proceeds to ensure that there would be money for Danny's long term needs. She also

[18] As noted in paragraph IV of the signed fee agreement, it only applied to services up to the award of damages by the trier of fact. Mrs. D'Attilo was concerned that the fee for collecting the $25 million would be charged at a higher rated since the recovery was after trial.

advised them that KKB was looking into the potential tax liability on any of the settlement proceeds and would need to consult a tax expert.[19]

Attorney Nastri also discussed with the D'Attilos the potential of allocating some of the settlement money to them. KKB was in favor of allocating some of the settlement to the D'Attilos but explained to them that any allocation would need to be approved by the Probate Court. Attorney Nastri initially thought a 90/10 (meaning 10 % of the settlement would go to the parents) allocation would be appropriate Upon discussions with the D'Attilos, because they were Danny's caretakers and the funds available to Danny would far exceed the projected $8 million cost of his life care plan, it was agreed that they would seek a 80/20 allocation (meaning 20% would go to the parents), assuming the probate expert the D'Attilos hired endorsed its reasonableness and the Probate Court approved the allocation.

January 4th Meeting and Final Mediation Session

In anticipation of what would likely be the last mediation session on January 11th, Attorney Nastri met with the D'Attilos on January 4th. Because the D'Attilos would likely not attend the last mediation session, KKB wanted to get a sense of their bottom line settlement number. At that time there was still an $18 million offer on the table. Before deciding to reject such a substantial offer, KKB wanted to spell out for the D'Attilos what they would receive after fees and costs based on a $18 million settlement. Likewise, KKB wanted to show the D'Attilos the breakdown of what they would receive at a higher settlement number that KKB though may be a possibility based on how the negotiations were going. Accordingly, in preparation for this January 4th meeting, consents to decline the $18 million offer and to settle for $22.5 million were prepared.

At the January 4th meeting, Attorney Nastri again confirmed the D'Attilos understanding of the fee agreement to be sure they understood why KKB would be paid 28%. In simple terms, Attorney Nastri explained that KKB was due 28% if at the time funds were paid, the statute contained a waiver provision. She further explained that the statute in effect when they signed the agreement did not have a waiver provision but that later a waiver clause was added to the statute. She was assured by the D'Attilos that they understood the terms of the fee agreement. Attorney Nastri also reviewed with the D'Attilos the prepared consent to reject the $18 million offer and the $22.5 consent to settle, the amounts of the litigation costs at the time and what the D'Attilos would receive. The D'Attilos decided to decline the $18 million offer and signed the consent documents, **which both noted the 28% fee; the lawsuit costs at the time of $597,379.57; an escrow of $40,000 for further costs; other adjustments for a CL&P judgment and the pay off of the Lawsuit Funding Solutions loan; and the net to the clients.** (Ex. 31)

[19] The proceeds from a personal injury judgment or settlement are not taxable. However, a question arose as to whether any of the settlement proceeds could be taxed because of the bad faith claims and offer of judgment interest they were seeking.

Despite this history, the Complainants allege that on January 9th Attorney Nastri advised them that they would need to sign a new fee agreement with a 33⅓% fee because the 2003 fee agreement had expired and that the call came out of the blue as D'Attilos had neither seen the fee agreement nor discussed the fee agreement since they signed it in February 2003. This is not true. The D'Attilos clearly had the fee agreement before Mrs. D'Attilo's discussion with Attorney Nastri on November 29, 2011, during which they discussed that the fee was 28% (not 33⅓% as Attorneys Nastri and Horwitz had assumed) and that the agreement covered the post verdict work. Moreover, five days before this "out of the blue" call, the D'Attilos signed consents noting a 28% fee. To the extent the D'Attilos may claim that this conversation was on some earlier date, **to be clear at no time did Attorney Nastri advise the D'Attilos that the 2003 fee agreement had expired and that they had to sign a fee agreement for a 33⅓% fee in order for KKB to continue to represent them.**

At the mediation on January 11th, they reached a $25 million settlement. On that same day after the mediation, the D'Attilos came in to sign the settlement statement (which contained an authorization to settle the case for $25 million), as well as the release and documents to be submitted to the Norwalk-Wilton Probate Court so that the approval process could be started. The settlement statement, like the consents signed on January 4th, noted the 28% attorney fee, the lawsuit costs, and money to be escrowed for future costs and adjustments. It also noted an 80/20 allocation of the settlement proceeds between Danny and his parents and the amounts to them based on those allocations. (Ex. 32) All of these documents were reviewed with the D'Attilos, executed and filed the next day with the Norwalk-Wilton Probate Court. (Ex. 33) The Complainants and their counsel would have this panel believe that the D'Attilos signed these documents (as well as others) because they were told to do so by their lawyers and were unaware of what was going on. However, based on the above history of being very engaged clients, there should be no doubt the D'Attilos knew exactly what they were signing.

Post Settlement and Alleged Conspiracy: January 12 – April 24, 2012

Attorney Nastri's and KKB's role post mediation was to continue to help move the settlement process to conclusion and to help the D'Attilos through the process while relying on the expertise of others regarding the structure and other financial issues as well as the probate issues. Although involved in discussions regarding the trust, after the initial filing of the probate documents, Attorney Nastri left it to Attorney Gallant to advise the D'Attilos regarding the trust and probate approval. The D'Attilos, as they had been throughout the process thus far, continued play an active role in the post settlement issues as well. There were countless meetings and conversations with the D'Attilos and the various other experts and consultants involved, and the process ultimately took far more time than anticipated.

As will be further discussed below, the Complainants and their lawyer suggest that during this time, KKB conspired with Attorney Gallant, hired by the D'Attilos to handle the trust and probate issues, to hide that KKB stole over $ 5 million from them. This allegation is based primarily on their claim that they were advised to move to another probate jurisdiction, the real purpose of which was so that KKB could avoid the appointed Guardian

ad Litem's scrutiny of its fee. They also attempt to inject a nefarious meaning to emails and other conduct when there is no basis to do so, all to paint the Respondents as liars and to further their high stakes conspiracy storyline. The history shows that the 28% was agreed to and proper and therefore, there was nothing to cover up. Moreover, there is no evidence of a conspiracy. The decision to move was based on the D'Attilos desire to leave the area as well as to obtain a greater allocation of the settlement and a more flexible trust, which, Attorney Gallant advised, would be easier in a different probate jurisdiction.[20]

Probate, Trust and Structured Settlement Issues

As part of the process of finalizing the settlement, the D'Attilos initially met with a structured settlement specialist on January 13th. In addition to other issues, they discussed the various types of trusts, the selection of a trustee, court approval, the fact that as caregivers for Danny they could receive income from the trust and structuring some of the settlement to ensure that there would always be money for Danny's care. (Ex. 34) It appeared by this time that the D'Attilos would be hiring Attorney Anne Crane of Berkowitz, Trager & Trager, LLC, who Attorney Nastri recommended, to handle the probate approval and possible trust issues.[21] Unbeknownst to KKB, they instead hired Attorney Gallant. Attorney Gallant contacted Attorney Horwitz on January 24th and advised him that the D'Attilos had retained him to set up a special needs trust for Danny and requested a meeting. (Ex 35)

Attorney Nastri and Attorney Horwitz first met with Attorney Gallant and the D'Attilos on February 1, 2012. Thereafter, there were ongoing conversations and meetings with the D'Attilos, Attorney Gallant, the structure specialist and KKB regarding this final piece of the settlement. Various issues were discussed including the nature of the trust and how much would be structured versus put in a trust. Although advising the D'Attilos generally about the settlement issues, Attorney Nastri left it to Attorney Gallant to advise the D'Attilos regarding the probate and trust issues as she did not have his expertise.[22]

A difficult issue soon arose when it became apparent that the D'Attilos wanted more control over the trust and more money from the settlement than the 20% allocation that was requested in the settlement statement already filed with the Norwalk-Wilton Probate Court. In Attorney Gallant's experience, Norwalk-Wilton Probate Court exercised a high level of control and scrutiny over settlements and special needs trusts and believed that the D'Attilos requests for more of the settlement and less oversight over their use of the trust money would likely not be approved in Norwalk. It was primarily this issue that led to the D'Attilos to move from Norwalk.

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[20] The Respondents and the undersigned do not have access to Attorney Gallant's file. In order to get a full picture of what was going on during this time, it may be of assistance to the panel to review the response submitted on behalf of the Day Pitney Respondents.

[21] The establishment of a trust is common in cases like this.

[22] In addition to the structure and probate experts, the D'Attilos also consulted with advisors from UBS and Wells Fargo. Therefore, throughout this process they were very engaged and thoroughly advised.

Regarding these issues, on February 9th Attorney Gallant advised Attorney Nastri that Mr. D'Attilo had called and said that **they wanted to receive at least $4.2 million (the allocation in the settlement statement provided them with $3.43 million).** (Ex. 42) In a February 16th email to KKB, Attorney Gallant advised:

> They [the D'Attilos] are coming in this morning to talk about the trust. Jim Dorney [sic] called yesterday and left a message saying they had moved away from the structure (again) but I don't know yet what they are thinking on that. I need to see whatever calculation you have (and backup) on their expenses for Danny over the last 9 years. **As far as I can tell the complaint only alleges economic damages for them so getting an extra $400,000 (as expenses) more than the 20% that has been requested is going to be a challenge unless the expenses exceed that 20% figure-- which I doubt.** (I realize we are also talking about future expenses for Danny but I assume we are going to be looking to Danny's share to pay most or all of those....we may be able to use that in some creative way however.) **This wouldn't be an issue in most PCs but it is likely to be in Norwalk.**

(Emphasis added.) (Ex. 36) Later that day Attorney Gallant advised that he had just finished up with the D'Attilos and that "[t]here is a big issue here." (Ex. 36)

By this time, Colleen Fries had also been appointed as Guardian ad Litem. This was not a surprise to Attorney Nastri, being familiar with the Norwalk probate district and its close examination of settlements and practice of appointing Guardian ad Litems. When Attorney Nastri filed documents to approve the settlement in Norwalk, including the settlement statement noting KKB's 28% fee, she was well aware of the likelihood of the appointment of a Guardian ad Litem and the scrutiny with which the court would review all aspects of the settlement, including KKB's fee.

Attorney Nastri knew and liked Attorney Fries. However, according to Attorney Gallant's prior experience with Attorney Fries, she favored a strong oversight over the special needs trusts, which was in contrast to what the D'Attilos wanted. In a February 20th email to Attorney Nastri and Attorney Horwitz, Attorney Gallant advised:

> I think we are getting close to the moment when we must make a decision. Your comments to me reporting on Atty Fries perception [of trusts] are very troubling (quite apart from the misrepresentation of my view of these trusts and their purposes). **I feel we cannot ignore her (in my view misguided) perspective and the impact it will have on the Cathy and Dominic's efforts for Danny. (We can anticipate that the Judge will defer in significant measure to the recommendations of the GAL he has appointed. He has done so in the past.)**

(Ex. 37)As part of advising them regarding the trust, Attorney Gallant explained to the D'Attilos both his prior experiences with Attorney Fries and in Norwalk in general and that

their desire to have more control of the trust money and a larger allocation of the settlement would more likely be granted in another jurisdiction. Prior to any concerns about the level of oversight by the Norwalk-Wilton Probate Court, however, the D'Attilos had expressed an interest in moving from Norwalk due to the notoriety of the size of the verdict and that it was known that they had come into money. They also had an interest in moving from their house, which was in foreclosure and needed a lot of work to make it appropriate for Danny as he grew. Even during the course of the litigation, the D'Attilos had advised that for various reasons they ultimately might not stay in Norwalk. (Ex. 38) Based on these considerations and their discussions with Attorney Gallant regarding his experiences in Norwalk and their desires regarding the trust and settlement allocation, the D'Attilos began looking for rental properties outside of Norwalk.

Although aware of these issues, Attorney Nastri was not involved in the D'Attilos decision to move. On February 17th Mrs. D'Attilo sent an email to Attorney Gallant **only** advising that they are looking at new places the next day. (Ex. 39) On February 20th, Attorney Nastri advised Attorney Gallant that "[the D'Attilos] still have not called me to let me know they are considering a move. I trust you to give them advice on that," meaning she does not have the expertise to advise them on those issues. (Ex. 39)

After discussions with Attorney Gallant, on February 24, 2012, Attorney Nastri withdrew the filing she had made in the Norwalk-Wilton Probate Court immediately following the settlement. (Ex. 40)Neither the D'Attilos nor Attorney Gallant were prepared to go forward with the request for settlement approval as previously filed. Neither the trust nor the structure were worked out and the D'Attilos were at least planning to move from Norwalk, although as of that date they had not secured a new residence. The Norwalk-Wilton Probate Court clerk called to inquire about the withdrawal, as did as Attorney Fries, and Attorney Nastri explained the situation – that the trust documents were not complete, the clients had not decided on structure and they were contemplating not remaining in Norwalk due to concerns relating to the general size of the verdict.[23]

Despite clear evidence to the contrary, it is repeatedly claimed that Attorney Nastri and Attorney Gallant conspired to hide KKB's fee and the fee agreement, and that the move from the Norwalk probate district was part of this scheme. If Attorney Nastri wanted to hide KKB's fees from Norwalk-Wilton Probate Court and the Guardian ad Litem that she knew would be appointed, she would never have filed the probate documents the day after the settlement knowing that the fees would be scrutinized as part of the settlement approval

[23] The Complainants and their counsel suggest that Attorney Nastri lied to the Probate Court. As the evidence demonstrates, everything Attorney Nastri told the Norwalk Probate Court and Attorney Fries was true. It was not until February 26th, after the documents were withdrawn from the Norwalk Probate Court, that the D'Attilos application for a Bethel rental was approved and March 6th that they actually moved. (Ex. 41) In addition, they were moving in part due to their perceived publicity surrounding their case. There was also nothing improper about the D'Attilos moving, in part, to take advantage of a more favorable probate district. Advising the Norwalk Probate Court and Attorney Fries of this would have been improperly disclosing confidential information.

process. Like the rest of the claims in the grievance complaint, there is no credible evidence for this claim. What should be clear is that the plan to move was the result of D'Attilos' desire to receive more of the settlement and less oversight over the trust, which Attorney Gallant advised would be more difficult if not impossible in Norwalk, and their desire to leave the area, a decision in which Attorney Nastri was not involved.

In order to further the conspiracy storyline, the Complainants and their attorney also claim that a series of innocuous emails demonstrate that Attorney Gallant and Attorney Nastri were trying to hide KKB's fee and fee agreement. This is untrue. For example, they point to an exchange of emails between Attorney Nastri and Attorney Gallant on February 9th after Attorney Nastri spoke to Colleen Fries. Since Attorney Gallant was handling the probate issues, Attorney Nastri relayed the conversation to him, advising him that Attorney Fries requested the complaint, fee agreement and costs and that she told Attorney Fries that he was involved. In response, Attorney Gallant asked for the documents they would be sending to Attorney Fries and stated, "And so it begins..... But at least we are off to a good start with her. Domenic called this afternoon saying he needed to know that he would receive at least $4.2 MM. I assured him we are doing everything possible...." (Ex. 42)

There is absolutely nothing in these emails that even suggests that Attorney Nastri was trying to hide anything from Attorney Fries. From Attorney Nastri's prospective, Attorney Gallant's comments were simply the result of his prior experience with Attorney Fries and that he was happy things were starting off well with her. Moreover, when the exchange occurred, Attorney Gallant did not even have the retainer agreement so to suggest that this exchange was related to their conspiracy to hide the contents of a fee agreement that Attorney Gallant did not even have and therefore, could not have read is absurd. (Ex. 58) In fact, Attorney Gallant and Attorney Nastri never discussed the contents of the fee agreement.

The Complainants also make much of an exchange between Attorney Nastri and her paralegal who was tasked with sending the requested documents to Attorney Fries while Attorney Nastri was away. Attorney Nastri asked her paralegal if she had checked with Attorney Horwitz or Attorney Bloss before she sent the retainer as she thought they had some concerns. Her paralegal responded that **the only item Attorney Horwitz did not want to send was the authorization to KKB to accept the $25 million**, which was at the top of the settlement statement, but realized it had already been filed with the court. (Ex. 43) The authorization to settle has nothing to do with KKB's fee or the fee agreement. The reason Attorney Horwitz did not want to send the authorization was simply because it was a communication with the client that was unnecessary to the settlement approval process. The consent to settle containing the authorization and noting KKB's 28% fee had already been filed with the Probate Court. **More importantly, the fee agreement was sent to Attorney Fries. If Attorney Nastri were trying to hide the fee agreement, she could have easily delayed sending it and with the matter being withdrawn from the Norwalk-Wilton Probate Court a few week later, could never have provided it to Attorney Fries.**

In addition to the issues with the D'Attilos requests for more of the settlement and a less restrictive trust, there were also ongoing issues regarding structuring part of the settlement. The D'Attilos kept changing their minds as to whether to structure any part of the settlement and if so, how much. The structure specialist, Attorney Nastri and Attorney Gallant devoted a great deal of time to reviewing these issues with the D'Attilos. Many, many different structure illustrations were prepared. And as with all of their decisions, the D'Attilos deliberately evaluated the structure options and sought input from various people. All of this delayed going forward with probate approval. (Ex. 44)

Tax Issues Related to the Settlement

Another example of Attorney Altschuler attempting to twist the facts to support his conspiracy is with the alleged cover up of a tax issue related to the settlement proceeds. The question was whether some of the settlement proceeds would be taxable because of the bad faith claims and offer of judgment interest that was sought. Neither in the civil case nor this grievance complaint are there any allegations of any harm caused by KKB's handling of the tax issues. Instead, relying solely on a February 12, 2012 email from the expert, it is alleged that the reason KKB did not want to address this issue was because doing so would have required amending the prior settlement agreement which "would likely have resulted in the very Probate Court scrutiny that the Respondents were going out of their way to avoid." This is false.

First, the D'Attilos were, in fact, aware that KKB was reviewing any possible tax implications of the settlement. Not only did they tell them, but an outstanding bill from the expert is noted on the settlement statement that the D'Attilos reviewed and signed. In addition, the question about how the IRS would treat the settlement was not settled; indeed, the bad faith expert retained by KKB to provide advice for the mediation said that he could offer no opinion on the issue. What is not pointed out in the grievance complaint is that after a better understanding of the procedural posture of the case, Mr. Wood opined on March 15, 2012, "...**I think we could legitimately argue that the settlement is 100% for physical injuries and fully excludable from gross income.** Conversely I suppose the IRS could conceivably argue that all payments over $2M represent taxable interest. **I think our arguments are better than the IRS arguments**...." (Ex. 45)

Since the insurance company was funding the settlement in its entirety and maintained that its policy did not cover offer of judgment interest, the driver of the settlement was clearly the alleged bad faith for failing to settle the case for the insurance coverage. Additionally, the $25 million settlement was less than half of the $58.6 million jury verdict for personal injuries (none of which would have been taxable if collected). Based on these considerations, it was determined that the risk of tax liability was minimal.

More importantly, the fact of the matter is that it was always understood that the settlement agreement would likely need to be amended to allow structuring of part of the settlement, which KKB was always prepared to accomplish but the D'Attilos themselves decided not to do. (Ex. 46) In fact, counsel for the insurance company had received draft revisions to the

release related to the structure. (Ex. 47) Further, the release was signed at the last session of the mediation to formally commit the insurance company to the settlement amount, but even then it was contemplated that the release would need to be modified.

Filing of Probate Documents in Northern Fairfield County Probate Court

On behalf of all the D'Attilos, Attorney Gallant filed with the Northern Fairfield County Probate Court for approval of the settlement on April, 2 2012. (Ex. 48). The documents submitted included a revised settlement statement[24] that showed a 25% share to Mr. and Mrs. D'Attilo. (Ex. 49) However, the application sought advance approval for payment from the restricted account of a monthly stipend to Mr. and Mrs. D'Attilo in the amount of $16,500 for their care of Danny. (Ex. 50)

A hearing before the Probate Court took place on April 24, 2012. By that time, the D'Attilos had decided not to put any of the settlement into a structure. They did not ask for Attorney Nastri's advice but apparently told Attorney Gallant that they would not put anything into a structure unless the probate judge ordered them to do so. (Ex. 51) Characteristically, the D'Attilos were not simply relying on the advice of their attorneys, all of their actions were thought out and purposeful, and they were not going to do anything that they did not want to do. The judge approved the settlement without the structure, including the 75/25 allocation of the settlement.

Disbursement of Settlement Proceeds

On May 9, 2012, the D'Attilos signed a consent to endorse the settlement check and disburse proceeds as well as the settlement statement, which again showed the 28% attorney fee and which Attorney Gallant then filed with the Probate Court. (Ex. 53) On May 15, 2012, the D'Attilos met with Attorney Nastri and Attorney Horwitz, as well as their paralegals to review the disbursements and to receive their portion of the settlement, $4,165,284.73 (Danny received approximately $12.8 million, which was placed in the trust). (Ex. 54) After the final disbursements were made in connection with the court approved settlement statement, KKB closed its file. On June 2, 2012, Attorney Horwitz, Attorney Nastri and Attorney Nastri's paralegal attended a celebration dinner at the D'Attilos' home.

Post Settlement

After KKB's representation ended, the D'Attilos became increasingly frustrated with their lack of control of the trust money. Their relationship with Attorney Gallant deteriorated to the point where he resigned as trustee in August 2013.

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[24] Contrary to allegations in the grievance complaint, there are numerous emails showing that KKB did in fact prepare the settlement statement albeit with some input from Attorney Gallant, which was necessary as he was filing the documents with the probate court. (See, i.e., Ex. 52)

At some point, Attorney Anne Crane (the original probate attorney recommended by Attorney Nastri) began representing the D'Attilos, but this apparently did not work out. The D'Attilos then hired another attorney, Jennifer Port, who had the trust amended to appoint two trustees – the D'Attilos as caretaker trustee and Attorney Vincent Freccia as an independent trustee who would be responsible for all decision making as to the distribution of the trust money. At some point they also hired Attorney Ganim and then terminated him as well. They also asked Attorney Freccia to resign as independent trustee. In an email to Attorney Freccia and various other people including Attorney Horwitz, Attorney Nastri, Attorney Gallant, and Attorney Ganim, Mrs. D'Attilo wrote "It is clear to us that you never wanted to work with us, as a team but rather be a boss like Brad Gallant." (Ex. 66)

A few months after KKB's representation ended, Mr. D'Attilo contacted KKB with complaints about the restricted nature of the trust. In February 17, 2013, Mrs. D'Attilo reached out to Attorney Nastri, forwarding an email from Attorney Gallant and asking whether Attorney Gallant was suggesting a legal battle. Attorney Nastri responded:

> It certainly sounds like the relationship between you and Brad is not very good...I know that you and Dom are completely stressed out and have nothing but Danny's best interests in mind in every decision that you make....You certainly always have the option of replacing him, but I would not recommend doing so. My understanding is that Brad has gotten you a very flexible arrangement with the trust funds, but he also has reporting obligations to the probate court. Even if he wanted to accommodate some of your requests, he might be prevented from actually doing so by the probate court, which has the last word on decisions regarding the trust. My best advice is to try to work with Brad and his staff to get through this crisis....You or Dom can call me next week to let me know how everything is going.

(Ex. 55) Thereafter, the D'Attilos communications became more volatile, with increasingly hostile emails and phone calls. In a February 26, 2013 email, Mrs. D'Attilo wrote to Attorney Nastri:

> I am sorry I hung up, but I could tell you were very busy. Sorry to have bothered you. No worries, I will never bother you again. We just wanted to know that we didn't stand alone; but I guess we do STAND ALONE. What a shame Danny, won this money for his loss of life he was supposed to have, at the rate Brad is going Danny will never ever see that money. If this can't resolve, **we have an interested party at the news that Domenic has been in contact with, they are very interested to know more about Danny's case and just how things work once a case is settled....But, I will never finish with Brad, unless he decides to back down, he is my new Dr Viscarello,** and he is unethical, snake and he thinks he [is] superior to all, arrogance will only take someone so far, look how well it worked for Dr. V, all his lies were exposed at the end. **The same will happen here.** I thought your company

> fought for the victim, Danny is the victim, this is Danny's money, why does Brad make more money than Danny? who did fight to get this money for so he could rape a salary, and do [what] he wants and never deal with the parents.

(Emphasis added.) (Ex. 56) In January 2014, Domenic called and spoke to Attorney Nastri's paralegal and stated that he was disgusted with Attorney Nastri and that he was "getting rid of all the bad people." (Ex. 57).

More recently, the D'Attilos successfully terminated the trust.

RULES OF PROFESSIONAL CONDUCT[25]

Rule 1.5: Fees

There is no violation of Rule 1.5. The Complainants allege that the fee charged and collected in 2012 was unreasonable because KKB had agreed to a fee based on the statutory sliding scale. If the panel determines that the Complainants did not present probable evidence that the KKB lawyers defrauded their clients, then there is no ethical violation.

In addition, even though KKB's 28% fee is appropriate under their fee agreement, the fee charged and collected must be reasonable. Rule 1.5(a) 1-8 provides the panel with some of the factors to determine the reasonableness of the fees charged and collected. As noted in the commentary to Rule 1.5 "[t]he factors specified in (1) through (8) are not exclusive. Nor will each factor be relevant in each instance." For example, even if a lawyer did not spend alot of time on a matter, but the results were extraordinary, the fee charged and collected would still be reasonable.

The D'Attilos' case was very difficult to win right from the outset. When KKB was hired in 2003, they initially could not find board certified experts to opine that the hospital or the doctor made a mistake resulting in Danny's catastrophic injuries. When the D'Attilos agreed to a 28% fee, it was unknown if they would recover against the doctor or the hospital. Thereafter, KKB represented the clients for nine years through two complete trials, and incurred over $600,000 in expenses, that according to the terms of the retainer agreement, KKB would not recover if the second trial ended in a defense verdict.

In May 2011, the jury returned a verdict of $58.6 million, the highest medical malpractice award in the state's history. The doctor had insurance coverage of no more than $4 million, which made the collection of $25 million, six months after the verdict from the

[25] Mr. Altschuler notes in his complaint that any unethical conduct by the Respondents occurred *after* January 11, 2012, the date they settled the case for $25 million.

doctor's insurer, miraculous. The result achieved by the KKB lawyers was based exclusively on their extraordinary technical and strategic skills.

A fee is reasonable based on the time and labor required, the novelty and difficulty of the questions involved, the skill requisite to perform the legal services properly and the experience, reputation and ability of the lawyers performing the services. Rule 1.5(a)(1)(7). Based on any measure, the $7 million fee collected by KKB was reasonable.

Rule 8.4: Misconduct

Professional misconduct under Rule 8.4 is one of the most serious violations with which a lawyer can be charged. A finding that a lawyer willfully violated this Rule could likely lead to disbarment. The Complainants did not present probable evidence that KKB agreed to limit its fee based on the sliding scale in §52-251c. As such, there is no basis to find that any KKB lawyer violated Rule 8.4.

The highly publicized civil lawsuit and now this grievance complaint is based on the Complainants' false premise that the KKB lawyers are criminals. This grievance complaint was built on the flawed assumption that the KKB lawyers agreed to represent the D'Attilos based on the statutory sliding scale with anything over $1.2 million allowing only a 10% fee. Throughout the civil pleadings and now this grievance complaint, it is apparent that the Complainants and their attorney were not concerned about the truth. They were not concerned about why the standard fee agreement was changed or why Attorney Greany was sent the revised agreement for the D'Attilos to sign.[26] They were not concerned about the unblemished record of five lawyers who worked thousands of hours to champion the D'Attilos' cause. Absent any proof, Attorney Altschuler resorted to vicious comments about KKB to sensationalize their case.

Attorney Altschuler claims that Kathleen Nastri, James Horwitz, Michael Koskoff, William Bloss, and Joel Lichtenstein stole five million dollars from the D'Attilo family and then formed a conspiracy with Attorney Gallant to hide their criminal acts. In every court pleading, press release and now this grievance, Attorney Altschuler made sure he emphasized how unscrupulous he believes the Koskoff lawyers acted. Here are just a few examples of Attorney Altschuler's characterization of my clients:

- The documentary evidence **establishes** that the Respondents acted in concert to defraud the D'Attilos out of millions of dollars. **(Gr. Compl. ¶ 11)**

[26] We assume there were other communications between Attorney Altschuler and Attorney Greany that either preceded or supplemented the March 2, 2015 email, such as phone calls or letters. You would expect that if Attorney Altschuler had some real evidence that Attorney Greany would testify under oath that KKB agreed to the statutory sliding scale that Attorney Altschuler would have made that the first exhibit of this grievance. If this panel permits a reply (Practice Book § 2-32(a)(1)), will Attorney Altschuler attempt to reach out to Attorney Greany to see if he will now contradict his prior comments to say that he, in fact, spoke to Attorney Koskoff, who agreed to cut the fee from 33⅓% to the statutory sliding scale?

- The Koskoff Respondents, as **aided and abetted** by the Day Pitney Respondents, apparently **felt entitled** to take millions of dollars that did not belong to them. **(Gr. Compl. ¶ 368)**
- It will not serve justice if these attorneys are **suspended, disbarred, or imprisoned,** but the D'Attilos are then unable to obtain full restitution for all of the injuries that they have suffered, including those not subject to arbitration. **(Petition to the Connecticut Supreme Court for an appeal from Judge Frechette's order staying the civil action pending arbitration.)**

The claims in both the civil action and the grievance complaint are based on a complete disregard of the **evidence** that disproves the allegations. It is repeatedly claimed that KKB and Day Pitney moved the probate matter from Norwalk-Wilton Probate Court to Northern Fairfield County Probate Court to hide that KKB stole $5 million. If KKB planned to avoid the scrutiny of the Norwalk-Wilton Probate Court, then why did Attorney Nastri file any documents related to approval of the settlement with the Norwalk-Wilton Probate Court, including the settlement statement noting KKB's 28% fee? Why did Attorney Nastri give Attorney Fries, Danny's Guardian ad Litem, the fee agreement if Attorney Nastri was part of a conspiracy to defraud her clients? Why has Attorney Altschuler not given the panel any documents from Day Pitney's records to show the change in probate venue was because Danny's parents wanted a better chance of increasing the payment to themselves?[27]

Rule 1.7: Conflict of Interest Current Clients

Similarly, it is claimed that there was a breach of duty of loyalty by KKB representing Danny at the Probate hearing when the settlement was approved before Judge Egan. If this panel finds that there is no probable evidence that KKB stole money from their clients, then both Danny and KKB's interest were common (to complete the settlement process).[28] Thus, there is no ethical violation.

Rule 1.8: Prohibited Transactions

Without any support, it is claimed that when the D'Attilos borrowed short term funds from Lawsuit Funding Solution (LFS) there may have been an ethical violation. Attorney Altschuler concedes, that if KKB had no financial or other connection to LFS there is no ethical issue. (Gr .Compl. 317) KKB does not have now, or in the past had, any interest in LFS. The loans were requested by the D'Attilos as their Norwalk house was in foreclosure. They had very bad credit and would not have qualified for a traditional loan. The loan was paid back in full from the settlement proceeds in May 2012.

Rule 1.15: Safekeeping Property

[27]The Respondents are not suggesting that the D'Attilos requests were inappropriate since they were the sole caregivers for Danny.

[28]As noted in the commentary to Rule 1.7, "[l]oyalty [is an] essential element... in the lawyer's relationship to a client. Concurrent conflicts of interest can arise...from the lawyer's own interests."

It is claimed that KKB did not account for its deduction of costs and expenses that are set forth in the settlement statement of May 2012. As provided in Rule 1.15(e) upon request by the client, a lawyer "shall promptly render a full accounting regarding such [funds]." In this case, KKB is required to account for costs expended on behalf of the clients, which they have done.

On November 14, 2014, Attorney Altschuler made a request that KKB account for the costs and expenses incurred by KKB from 2003 – 2012. On December 3, 2014, counsel for KKB sent a letter to Attorney Altschuler enclosing a detailed listing of costs/expenses incurred by KKB to prosecute two trials and settle the case. (Ex. 59) Although this document was made in the ordinary course of business (throughout two trials) for all the costs/expenses incurred by KKB on behalf of their clients, Attorney Altschuler wanted more information to verify that the detailed expenses were, in fact, incurred.

Although not required under Rule 1.15 to do so, in order to dispel any claim of misappropriation of client funds, the KKB staff reconstructed 100% of the backup for the costs and expenses listed on the settlement statement signed by the D'Attilos. Attached for the panel's review is the spreadsheet for this accounting.[29] (Ex. 60) The panel should know that it was an enormous undertaking to recreate nine (9) years of information. We forwarded the complete history with all supporting documentation to Attorney Altschuler on May 19, 2015.

Rule 1.16 (d) (Regarding the Production of the File):

As provided by the Rule 1.16(d), after the lawyer's representation is over the lawyer is to: surrender papers and property to which the client is entitled. Ethics Opinion 84-3 published by the Statewide Grievance Committee provides guidance to lawyers as to what information should be returned to the client. (Ex. 61) Although this decision was written well before electronic communication was common, a reasonable interpretation of the Rule is that internal communication, whether written or electronically made, are not the, "property of the client" and thus, not part of the file that must be returned to the client.

Prior to KKB being represented by counsel, KKB produced thousands of documents. Once our firm was hired to represent KKB, we reviewed additional documents. On June 27, 2014, we sent to Attorney Altschuler hundreds more documents based on what we felt in good faith his clients were entitled to receive. Thereafter, we sent him copies of x-rays, videos and trial exhibits, and a copy of Ethics Opinion 84-3, to explain the categories of information to which the D'Attilos were entitled. We also sent him additional color copies of settlement documents at his request, as well as an internal computer ledger of the costs expended in this matter. (Ex. 62)

[29] If the panel wants copies of the checks and other expenses dating back to 2003, it will be forwarded to you upon your request.

Once suit was filed, we continued to look for additional documentation outside of the closed file. This included our examination of each electronic program and the local hard drives used by the KKB lawyers and staff involved in the D'Attilo matter. As a result of this search, we located additional documents, which appear largely duplicative of what has already been produced.[30] Like the reconstruction of the financial information, the task of recovering this information has been ongoing since suit was commenced at the end of December 2014.

Rules 7.1 and 7.2 (Regarding Advertising)

As Attorney Altschuler does throughout the grievance complaint, he cites a professional code provision, leaving the panel to decide which of the five lawyers, if any, are claimed to have violated the Rule. This is true of the claimed violations of Rules 7.1 and 7.2 regarding advertising.

As noted, the Professional Rules do not prohibit the publication of a truthful statement of a lawyer's achievement as long as it is not misleading. See Rules of Professional Conduct (2015) 7.1, commentary; 7.2, commentary. (Ex. 63) Similarly, a lawyer is not prohibited from advertising.[31]

As the panel may discern, when KKB successfully prosecuted a $58.6 million verdict (the highest medical malpractice verdict in Connecticut history), this resulted in both state and national news. The D'Attilos were interviewed along with their lawyers. Thereafter, KKB added information about the case to its website. The KKB website is subject to review by the Statewide Bar Counsel, which has never questioned the propriety of publishing information about the D'Attilo case. There is nothing in the Professional Rules that prohibit a law firm from publicizing its accomplishments over the objection of a former client.

CONCLUSION

The Rules of Professional Conduct are rules of reason designed to provide guidance to lawyers and to regulate conduct. The Rules are not designed to be a basis of civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. See Rules of Professional Conduct 2015, Scope. (Ex. 64)

As the local panel, you are the gatekeepers who decide if what a complainant alleges is probably true, warranting further examination by the next panel or the court. Here, you will decide whether the Complainants have presented credible evidence that it is likely

[30] If we find additional documents that need to be produced, we will do so. I am sure the panel can appreciate that locating documents for two complete jury trials dating back to 2003 is not a simple process.

[31] To assist the public, lawyers should be allowed to advertise. See Rules of Professional Conduct (2015) 7.2 , commentary (Ex. 63)

that five lawyers with unblemished ethical records and years of achievement would steal $5 million dollars from their clients.

Although you and I were not there through nine years and two complete trials, while Joel Lichtenstein, William Bloss, Michael Koskoff, Jim Horwitz and Kathleen Nastri fought for a young boy and his family, we can sense the trust and honesty that existed between the lawyers and their clients. We can sense as they sat there together as the jury came in with their verdict, how difficult those moments were just before the verdict was read in the court room, how the clients and lawyers were one.

In order to answer the question of whether it is probable that my clients would steal money from the D'Attilos, I ask the panel to consider this exchange between Mrs. D'Attilo and Attorney Nastri's paralegal, Barbara Larocca; when returning the signed settlement statement, **Mrs. D'Attilo wrote, "I can't believe we are finally here. What a ride it has been indeed. Wishing everyone well, say Hi to everyone..." Attorney Nastri's paralegal responded, "Love you both."** (Ex.65)

I respectfully ask that this grievance be dismissed.

THE RESPONDENTS
ATTORNEY KATHLEEN NASTRI
ATTORNEY JAMES HORWITZ
ATTORNEY MICHAEL KOSKOFF
ATTORNEY WILLIAM BLOSS
ATTORNEY JOEL LICHTENSTEIN

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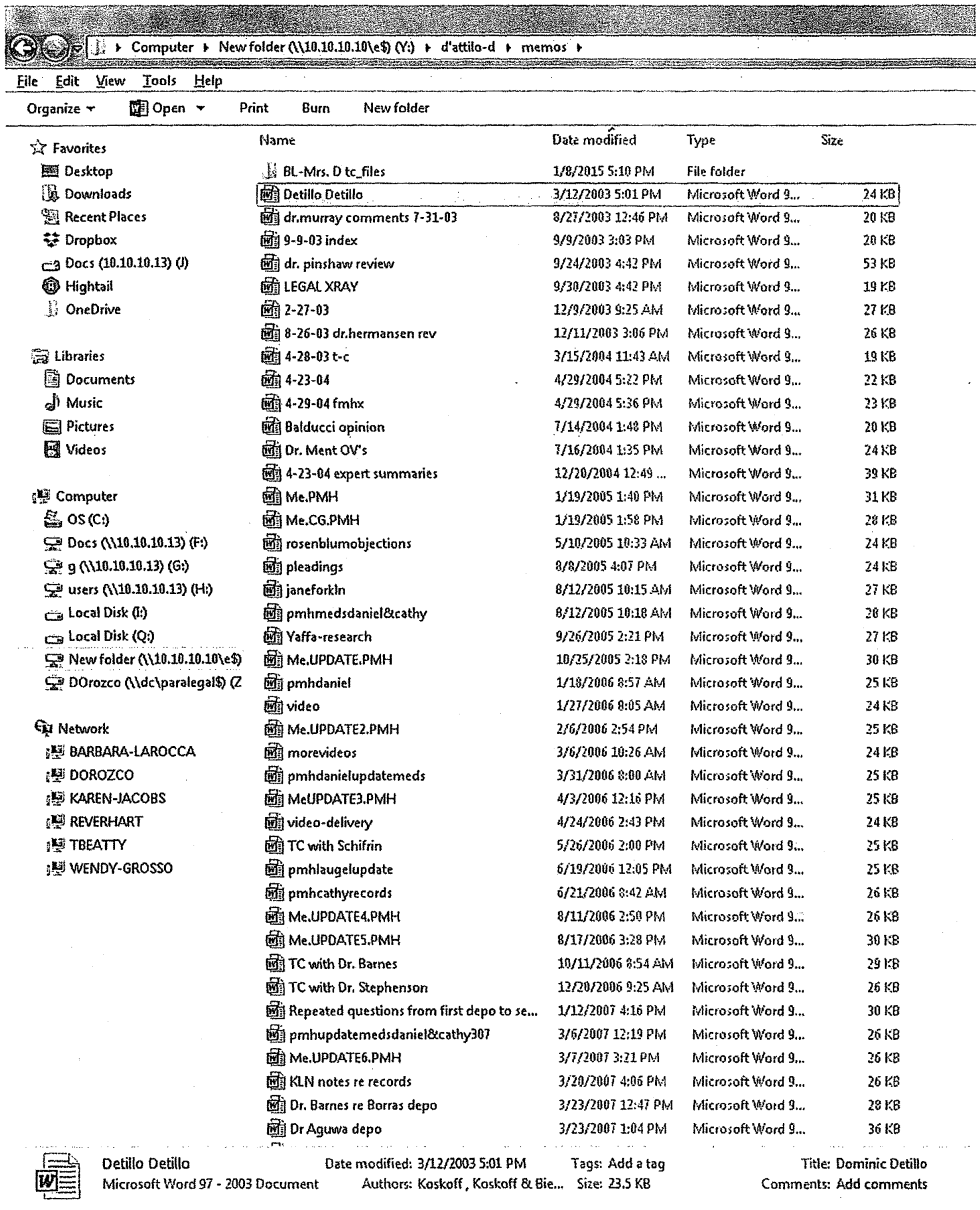
Dominic Detillo

Hoping to say that he was referring the case but forgo a referral.

Mark Greany, Atty.

9 Mott Street in Norwalk
854-0311

Rosanna
Would like to forgo referral.


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dr.murray comments 7-31-03 8/27/2003 12:46 PM Microsoft Word 9... 20 KB
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Detillo Detillo Date modified: 3/12/2003 5:01 PM Tags: Add a tag Title: Dominic Detillo
Microsoft Word 97 - 2003 Document Authors: Koskoff , Koskoff & Bie... Size: 23.5 KB Comments: Add comments

From: Kathleen Nastri <KNastri@KOSKOFF.com>
Sent: Tuesday, November 29, 2011 12:41 PM
To: Michael Koskoff (mkoskoff@gmail.com); James Horwitz <JHorwitz@KOSKOFF.com>; Bill Bloss <BBloss@KOSKOFF.com>; Josh Koskoff <JKoskoff@KOSKOFF.com>
Subject: D'Attilo

Just got off the phone with Kathy D. told her there had been no progress/news on the settlement negotiations; that the last we knew $18 million was the limit of the authority. I told her we were hopeful that there would be an increase in the offer, but that we were dealing with a board, and an insurance company that was being asked to pay more than 10x its policy limits. I asked her to be patient. I also told her that she was correct and that I was wrong about the fees when I assumed all along it was 1/3. I told her they had negotiated a 28% fee, which would save Danny close to a million dollars if the case settled for $18 million. I also told her that she did not need to worry about the language in the fee agreement that it does not cover our work after the verdict; that we were continuing to work under the terms of the original fee agreement, and were not looking for any change/increase based on work since the verdict. She seemed to understand both the settlement status and the fee agreement.

Kathleen

Kathleen L. Nastri
Koskoff, Koskoff & Bieder
203-336-4421

KK&B

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Bridgeport, CT 06604
203.336.4421
www.koskoff.com

From: Cathy <cathymdattilo@aol.com>
Sent: Saturday, May 10, 2014 2:07 PM
To: cathymdattilo@aol.com; bgallant@daypitney.com; James Horwitz <JHorwitz@KOSKOFF.com>; Kathleen Nastri <KNastri@KOSKOFF.com>; Barbara Larocca <Bfbarbiero@KOSKOFF.com>; mjones@ibolaw.com; paul@ganimlegal.com; jport@ibolaw.com; scott.kelly@wellsfargoadvisors.com; ctcounsel@aol.com
Cc: danieljacob25@yahoo.com
Subject: Re: The Daniel Jacob D'Attilo Trust

HI Vinny:

This letter is to inform you that Domenic and I no longer retain Paul Ganim Esq.,in this matter.

I will be attending the hearing on May 20th pro se.

At this time we would like to ask you to resign. When we first met at Ash Creek Salon, last year, you stated that you would leave at anytime if that were our wishes you also said you would be a co trustee with us.

Well, now I am asking if you would please step down as Independent Trustee.

It is clear to us that you never wanted to work with us, as a team but rather be a boss like Brad Gallant.

The trust as it stands and forgive me for the sake of repeating myself, & everybody knows this is not the what we asked for this Trust that is in place has no protection for our son at all, we never agreed to it, everyone knows Brad wrote this for his own self interest.

Brad and everyone did as they wished, with no regard to how it would affect Danny.

Two years later & we are still renting with no proper way to handle Daniel's daily care as the house is rented and can't be altered (showering and changing and lifting)

Please don't do the lawyer thing and caution me that I making a mistake, our only mistake has been trusting the lawyers involved with this case. Trust is no longer there for any lawyer or court, the only persons we can depend are ourselves.

I am sure like Brad you probably will not resign as you get paid $400.oo hour out of my son's estate to fight against Daniel's parents
wishes.

This Trust was set up by Brad Gallant for the sole purpose to keep lawyers in business not for it to flow to help with Danny's needs
the lawyers in this case have received way more then Danny.

Everyone knows the truth, and everyone knows what they did individually against us.

We would like the opportunity to get our personal life back.

Please no more beat downs or threats, we get it, I am the nut job, and Domenic is the hot head. You all are right, we should bowing down and saying thank you all so much for taking our son;s money and enjoying your vacations on his expense pain and suffering while your children are off attending college getting ready to make a life for themselves, and they will be able to care for themselves and have families one day.

& we are the wicked horrible parents, trying to to attempt to give Danny a future and a family so that I can die in peace one day knowing that my son is safe loved protected and never is in a nursing home where he is forgotten.

I am Danny Jacob's mother, I waited six years to conceive him, went through IVF to get pregnant, attended doctors appointments every week sometimes twice a week, followed all the rules, was on bed rest for 6 months, only to have the doctor almost kill my son, when he was born he was dead, nothing no crying, no breathing, no joy only FEAR that I may lose the one person I waited for, for so long, every dream I have ever had shattered in seconds, when they wheeled me into to NICU, all I could see was this beautiful little boy, no I didn't see Danny when they took him

out, no they couldn't hand him to me, no baby laying on me, no pictures of a smiling threesome family, I was thrown things like Mri's, EEG's, cat scans, spinal taps, genetics, people blaming me for his sickness, cover ups because of the doctor negligence, I waited six weeks to bring my son home, I went home every late evening and cried in his empty nursery that had been waiting for him for several months, all those first time mom books and pregnancy books I read, I drank my water like a champ, followed it all, being in denial at first that the doctor I had put so much faith in knew that he could have prevented this, he knew my fluid was low, he hid that evidence until the first day of the first trial in 2009, he knew it would hurt him to expose that sooner, he never counted on a mistrial he had full confidence he would win, when I finally brought my son home, there was no happy home coming, we were met with Nurses, and birth to three, I spent my time learning about brain injuries, HIE, feeding tubes, cerebral palsy, networked with parents around the world comparing stories, finding new treatments, what other parents did to help there child progress as far they could, I threw away all the books I had prior, they didn't apply to me or my son, I turned to the Internet, never sleeping for fear my son would die in is sleep, and to this day, I am up all night never sleep soundly for I still fear going into his room and him not waking up, I almost lost him once, so I know the fear and I know its real and I know it can happen, it already did once, I never went to college, but I knew that i always wanted to have a family, and children. But after having Danny, i found myself reading things and understanding things I would never have thought in a million years I would be learning, I was terrified every single day, what if i do this wrong, what happens if has a seizure, what happens to my son is now, is the best it will ever be, what happens to him after we are dead, ask any parent of a special needs child, biggest fear of all, what happens after we gone.

After grieving for the child i lost that day, and the acceptance that Danny did indeed make it, but knowing that his life was going to be filled with major challenges, pain and discomfort, that is what I mean by grieve, his life was supposed to be a good one. It still will be, but I had to dream new dreams, everything was different now, I had to learn about my son's needs in a way I never knew existed before. We have been watching our son grow, and over time we see an amazing young man he is now 11 going on 12, he is funny, smart, he can count, and subtract, learning to spell, learning to use a power chair, when he is mad watch out you might get your nose broken. But Danny still watches Elmo only, he has only one friend, as you know. We dont have play dates, we don't get invited, we can't visit people because it is to difficult and not safe to carry him up stairs, we spend the majority of time at home as he is most happy here, he gets over stimulated when we go out, large crowds make him nervous, he cant be in the heat, his eyes can't handle the sun, he had his first seizure since infancy last Valentines Day 2013, he has already had surgery once to lengthen his hamstrings, he has to be put to sleep to get a teeth cleaned. He wears a diaper, he can't control his saliva, he vomits and refluxes everyday, wants to drink water so bad, and struggles terribly but wont give up, we still shower and dress him daily. Drive to and from his school averaging 80 miles a day. We watch our son struggle every single day, and although we accept the reality, the pain of watching him struggle will never ever go away.

You are all probably wondering why I am sending this to you along with asking Vinny to step down. Well very simply, you are ALL responsible for the position Vinnys holds today in Daniel's trust.

You all have now succeed with your goals. To prevent Daniel's parents from trying to give him anything additional or even basic needs to met by the trust.

That separate account you allow us to hold in our name, well we don't use it, why? because last time is was used against us.

With the exception, of Dannys ramp van, some equipment, surgery, and some additional requirements needed for need us to "move", thanks Brad. and a platform lift for my current rental which I was asked if it is a purchase we can take with us, No, the next wheelchair he receives won't fit it and we will need to move again.

Danny receive nothing from his trust, Domenic and I care for everything through the same salary we were allowed two years ago, & a stipend of $4,200.00 per month to be used only for the following : Health Insurance $700.00
Rent----------$2,500.00

Miscellaneous-----$,1000.00----- my electric alone is 500-600 a month always was even in Norwalk because of the laundry we do with Danny

Other then the above mentioned we as Danny's parents are constantly looking out for Danny's best interest. We wanted to give him ever opportunity to be happy,feel comfort, joy, safety and LOVED more then anything and that he is very lucky in he is surrounded by loving caring people who understand him, and we have rejected those who could not understand Danny as he doesn't deserve the negativity of that in the safety of his own home.

We have always provided for Daniel and will continue to do so. It was very kind of you to offer us a percentage, at least we have that to care for our son, it's better then we ever thought we were going to get anyway. I thought we were fighting that whole time just to receive if we were lucky 1.5 mil. but after reviewing the settlement statement after all this time i now see why you offered anything at all.

But now after all these years I found myself searching and reading and looking all over the Internet this past year. At first I thought I was crazy, but then reading and talking to people, I know is scary place Probate that is. In hindsight, had I know then what I know today, this email would never be occurring. At this point all I have left to say is where was Danny in all this? Did any one ever consider him? Did it ever occur to anyone as this continues today you are tearing his parents apart? do have any idea how many parents split because a child has a disability and the difficulties adjusting to that alone, but we fight to keep it together because we know our little boy needs us both in his life everyday? Every morning when go in his room and he greets us with the adorable crooked smile, I am reminded why, no matter how much I get beat down, I have to shake the pity off real fast cause as soon as his arm stretching up, and I received the best hug I have ever know, it took 9 years to receive these hugs, I no longer feel sad, because here at home in our own little world this is all normal, and the effort it takes for him to give me that hug, who I am to complain about anything I just got blessed by an Angel today. Danny is not a vegetable, he has needs, wants, and desires, opinions, and we as his parents do our beat to honor those wishes when ever we can because we see just Danny nothing else and we understand.

Regardless, of what you think of us individually, it has nothing to do with who we are as parents, no one has to like us, but there is no denying the care that Danny receives is exceptional because the love and bond is so strong there isn't anything we wouldn't do for him, as those with kids, know all to well. At the end of the day that is what we all working towards daily. During my second trial, a defensive expert came up to me in the hallway, although he went against me in court to protect Dr. Viscarello, he went out of his way to stop me, and asked to shake my hand, and said that he spend over 100 hours on our case, and he has never seen more dedicated parents and the exceptional lengths we have gone to to give him the best possible care. Yep over all those year waiting to see if we would win, we lost everything, we went bankrupt trying to give him the best health care possible, I applied for Medicaid and was denied because we had a home. I was told by a social worker to get divorced so I could qualify for state aid for Danny. Instead we did everything we could to maintain our health insurance so Danny could be properly cared for. Worked tireless caring for him and trying to juggle all the demands coming in and not be able to keep up with the bills, dodging the repo guy until i could get a van with no loan, purchased a 3000 van so we didn't have to be scared how to get danny anywhere. we turned to friends and family and the community to get help for our son.

Yet by the courts and lawyers we are ridiculed, beat down, judged, have been insulted, told to shut up, we have been told the judge formed a bad opinion of us the first day he met us that we were greedy parents. that he is concerned that we will not spend the money accordingly. One visit he makes this judgement even though he has never spoken to us & never addressed us with any questions other then are you ok with this? ok with what but we didn't have representation so we didn't have anyone to explained to us what exactly was just about to occur and he was going to sign off on it, and he did and in seconds once again, following all the advise and all the rules poof bye bye. You Cathy and You Domenic are now nothing in your son's trust. We actually were thought we had two lawyers but I found out later that I didn't have a single ally in that room.

Oddly enough the trust states, we can terminate the trust at anytime we have yet to find anyone willing to do so, all we are told is no judge will allow it. Then why is it even the trust. Oh is was supposed to stay with one company for eternity.

Why I am telling you all this, well because we have nothing left to lose, but our safety does concern me, looting estates is real. I network in a new direction now, I know we are in a stuck predicament, you have set our path for us, controlled our lives, and we went along with it, thinking and wanting to believe that someone would do the right thing we are at a loss here, all I can do not is network with

people and hope together we can find a way to work through a system unwilling to do the right thing. I have no where left to turn for advise, this trust is in Probate we are the parents yet, we are not needed in any capacity it really doesn't make any sense.

Clearly we have been backed in a corner and the barricade won't move. So it is what it is?

All this turmoil, chaos, all this protection from who? what? Us his parents, a Jury of six men sat for 4 weeks listening to testimony, giving up their personal time to be there, observe us, the doctor, and make judgement, and they did, what jury in the right mind even knowing the doctor is a fault would ever award a verdict like that, it seemed clear to us, that they believed strongly that would do everything in our power to give him the world, and they believed he deserved it and we clearly needed to prove ourselves for court all judgements about us were good, until we won. How could that change so fast? On May 25, 2011 we were two loving parents, who had been wronged, and our son robbed of any normal life, what happened and who did we piss off?

It is very hard to rectify an issue if no one is willing to help fight to fix it, instead they turn against us, anyone in our position would react emotional, and angry, it still really has nothing to do with the issues that bring me here today.

I read the article on the Walt Disney approach, and yes our life is changed forever in so many ways, I started out believing that our system was good one, that some people really do have a heart, yes we all need to make a living, but I have come to learn that not everyone is in it for the right reasons. The celebrity status we were happy for you, even though it was through our son'S misfortune, and bragged to us, it was cool though, we know how hard you worked you deserve it !!! But you threw us under the bus?

Our amendment, that was something, I got cornered once again two choices Brad or Vinny, never once we were considered. The day before the hearing sign this its the best I can do or you'll spend the next 10 year fighting in court. Not only was that amendment not what I asked for, nor was it our original intention when we met to do so that way, that amendment that great plan you promised us if we followed all the rules, yup I read that, I have never been more humiliated or insulted in my life and the only reason we signed is because Brad we were told was a big fish, very protected fish, we will never beat him, take this, like a plea deal in murder case, your innocent but yet, you have no choices either way your screwed no way out.

We went to each one of you begging to hear us, to help us, guide us, help protect our son please, and each one said it will never happen. That the court has issues with you and Dom, parents he has never had a conversation with. At the end of the day it's all bull.

I hope everyone is happy, enjoying the good life, oh believe me I know we all have personal struggles and issues, no one's life is without worries and there are those that are lucky enough to enjoy a pleasant life, never knowing pain or misfortune, or having a sick child. I do not wish what we have been though, for any family or child, what was supposed to give a little joy to my son's life, has turned into a nightmare from Hell.

I know one thing for sure, because although i never share things of this nature but for this one time i will allow myself.

The money in Danny's trust is blood money, Danny is an angel, he truly is special, or at least thats what I believe in regards to my faith, and I truly believe that those who have taken for selfish reasons, or hurt him in any way, actions that were taken against him, depending on what you believe you have someone bigger to answer to them us. We all meet our God someday. My grandmother told me many times growing up, always do the right thing, and God will protect you, never wish harm or bad on anyone because it will come to you, but believe in your heart, if someone wrongs you know, they have to live with that.

Sleep well. As I am sure even though I have been spilling my guts out to everyone, my words will fall on deaf ears, we get you all hold the cards.

Oh I know that what have written will somehow be used against me, but really what does it matter, anything I say or do will be held against me. Regardless, but at the very least, I had a chance to speak my peace.

Best wishes to all.

Cathy, Domenic & Daniel D'Attilo

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STATE COURTS:
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FEDERAL APPELLATE COURTS:
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2ND CIR. CT. OF APPEALS
3RD CIR. CT. OF APPEALS
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DISTRICT OF NEW JERSEY

FEDERAL BANKRUPTCY COURTS:
DISTRICT OF CONNECTICUT
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New York Office:
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Please Reply to Bethany Office

June 15, 2015

Steven P. Kulas, Esq.
Grievance Counsel, Fairfield Judicial District Grievance Panel
12 Bank Street, 2nd Flr. Seymour CT 06483
VIA EMAIL Steven.Kulas@jud.ct.gov, FAX 203-881-8391, and FIRST CLASS MAIL
CC via EMAIL: Anthony Nuzzo, Esq. and Michael Bowler, Esq.

RE: Grievances #15-0137 through #15-041

Dear Attorney Kulas,

I am in receipt of the Koskoff respondents' reply. Unfortunately, the core of their defense is the false claim that I "fabricated" the grievance against them. The Respondents did not have the courage of their accusation and did not file a grievance against me for fabricating a grievance complaint against them because they absolutely know their accusation is false. Their false accusation should be taken into consideration when deciding this matter. *See, e.g.*, *Statewide Grievance Comm. v. Ankerman*, No. CV000802379, 2001 WL 34039473, at *4 *aff'd*, 74 Conn. App. 464 (2003).

However, this is to notify the Panel that the KKB responses contain multiple *significant* misrepresentations of fact. As you undoubtedly know, this is a high profile case. Attorneys and clients throughout the state will be aware of its outcome and will be guided accordingly. Given the gravity of these grievances, I hereby request permission to file a formal reply and a reasonable amount of time to do so.

In fact, the respondents have done exactly what they accuse me of doing: their primary defense is a demonstrable fabrication. After reviewing my formal reply, this Panel should also consider whether there is probable cause that respondents intentionally sought to deceive this Panel to avoid taking responsibility for their unethical conduct and the theft of millions of dollars from funds held in trust.

This letter is not a formal reply but does point out only some of the many significant factual misrepresentations by the respondents, to establish why a formal reply is needed. Permitting the respondents to get in the last word without challenge creates the distinct possibility that the Panel will reach its decision based on erroneous information. Since I am confident that is not what the Panel would want, permitting a reply is a necessity to assure justice.

Reaching a decision based upon the actual facts is particularly important in this case. A previous grievance Panel declined to hear the grievance against the KKB respondents because of a conflict of interest -- in fact the conflict was that respondent William Bloss was (and is) a member of that first Panel. While the respondents are undoubtedly well-connected, this grievance is not about their connections but the documented facts. Given the many interrelated facts, only a formal reply will be sufficient to alert the Panel to the areas where the respondents are lying to this Panel.

I also want to alert the Panel that the KKB grievance reply includes some documents that were never turned over until now even though I requested a complete copy of the entire client file on May 13, 2014. KKB claims they did not have to turn over the documents because they were "internal documents", but given the fact they are using them in their defense, they should not be permitted to pick and choose which of the "internal documents" are disclosed. For example, in the respondents' Exhibit 44, there is a reference to Michael Koskoff having a conflict of interest in representing the insurance company that was also representing the doctor (I redacted the name of the insurance carrier since it is not relevant at this point).

From: John Bair [mailto:JBair@milestoneseventh.com]
Sent: Saturday, February 04, 2012 7:43 AM
To: Kathleen Nastri
Subject: Daniel D'Attilo

Kathleen, I spoke with Mike yesterday. Mike expressed to me that he is clearly representing the interests of [redacted] and has all along. He was unaware of who is paying what toward the settlement, which i will try to determine through defense counsel. Sorry i missed your call yesterday, are you available this weekend? if not, i'll try you on monday.

It's seems to me that if that were hidden or intentionally left silent that there be have been some issues with conflict of interest before and leading up to settlement if he was both speaking to [redacted] and your firm. Just an observation.

It's of no issue now, I just wanted you to be apprised as that was my original assumption. He is going to now take the position that the only way a structure can be done is traditionally through having [redacted] be involved. This may be of no consequence, if it is, i will advise you immediately. How this could be detrimental to the Dattilo's is if [redacted] has some program that must be followed or adhered to. Essentially if they are to be formally involved, then they may restrict the choice of carriers which we may choose ultimately, or require other language that will be very challenging to negotiate it's removal or alteration. Assume there is no harm in this until i confirm. If it becomes an issue, I may recommend having Mike Koskoff ask as a favor to recuse himself from [redacted] representation, and i will work with him on this side of the litigation.

I have no idea what this issue is about but the KKB firm never disclosed Michael Koskoff was representing the insurance carrier at the same time he represented the D'Attilos. Though this particular document is not even an internal document (because it is from a financial consultant outside of the firm), it was not turned over before. There are other internal documents which are being turned over for the first time in the respondents' reply, which are extremely harmful to the respondents' case such as Michael Koskoff's phone notes, and the November 29, 2011 internal email.

Therefore, I respectfully request that prior to issuing a decision, the Panel order that the respondents turn over all the documents they have yet to turn over, including the so-called "internal documents" and provide me with sufficient time to review in order to alert the panel to any other issues that I may discover in these withheld documents.

Additionally, my clients were obligated to sign the grievance complaint form that the statements were made under penalty of perjury. **I object to the fact that none of the respondents submitted a sworn affidavit affirming that their responses are made under penalties of perjury**. In fact, there are numerous factual allegations in the response that are clearly outside the knowledge of Mr. Nuzzo but he does not provide any affidavits or documents to support

most of these allegations. The Panel should not consider these unsubstantiated statements of fact without affidavits from the respondents to establish that respondents take responsibility for their factual claims.

The most dramatic issue raised in the complaint is that the respondents conspired to steal millions of dollars from trust funds. This case has to be considered in the context of the 175 years of legal experience of these KKB attorneys in comparison with the background of Cathy and Domenic D'Attilo. There are several significant and demonstrable falsehoods I want to use as examples. It is important for the Panel to know that there are many other significant misrepresentations that I believe this Panel should hear about to reach a fair decision, and this can only be done through a formal reply with exhibits. Such misrepresentations include:

- The March 12, 2003 note that Michael Koskoff wrote following his phone call with Mark Greany establishes that Koskoff and Lichtenstein are lying about what occurred in 2003 and Nastri is lying about her January 2012 conversations with the D'Attilos. Moreover, the respondents have taken a directly contradictory and incompatible position in Superior Court regarding the rationale for the 28%, further evidence that they are concocting a story now.

- The Respondents' repeated claim that they viewed the D'Attillos' medical malpractice case as "complex" and therefore KKB never would have agreed to the sliding scale, is a demonstrable lie as documented by KKB's November 2011 Settlement Memorandum.

- The respondents are lying about what the November 29, 2011 email actually says, which, in fact, is a smoking gun document turned over to the undersigned for the first time in KKB's grievance response, that *proves* that Kathleen Nastri defrauded the D'Attilos.

- The Respondents' claims regarding Norwalk are demonstrably false and misleading, for example, the respondents and Day Pitney did not actually seek more autonomy for the D'Attilos in the Northern Fairfield Probate Court, or an allocation in keeping with the actual Settlement Agreement. The *only* thing that the move accomplished was to get rid of Colleen Fries and to take the March 21, 2003 fee agreement off the Probate court's radar screen.

- Respondents withheld information regarding Lawsuit Funding for more than seven months. In addition, respondents have not provided actual billing statements and failed to inform this Panel after months of delay, KKB finally determined that it miscalculated the expenses due to them and overcharged complainants.

"The quantum of evidence necessary to establish probable cause exceeds mere suspicion, but is substantially less than that required for conviction. Our cases have made clear that "[t]here is often a fine line between mere suspicion and probable cause, and '[t]hat line necessarily must be drawn by an act of judgment formed in light * of the particular situation and with account taken of all the circumstances.' *State v. Patterson*, 213 Conn. 708, 720-21 (1990). These and other examples will merit the granting the right of reply given that the respondents are not only lying to this Panel, they are lying with impunity with most of their claims directly contradicted by documentary evidence.

I: KOSKOFF'S, LICHTENSTEIN'S, AND NASTRI'S DEMONSTRABLE LIES ABOUT GREANY AND KKB'S CONFLICTING EXPLANATION OF WHY KKB WAS ENTITLED TO 28%:

Many demonstrable lies can be found in respondents' discussion of Mark Greany. For example, on page 9 respondents claim "the D'Attilo's admit that they showed Attorney Greany the fee agreement that was initially sent to Mrs. D'Attilo." Except there is no such admission, anywhere. The grievance complaint merely states that the relative suggested showing it to Greany. If permitted to formally reply, I will provide an affidavit from the relative confirming she has no recollection of seeing the retainer agreement or giving it to Greany. For another example, a document turned over for the first time in their reply is the contemporaneous note Michael P. Koskoff made immediately after speaking with Mark Greany on March 12, 2003 (KKB Ex. #12), where Koskoff writes:

Dominic Detillo

Hoping to say that he was referring the case but forgo a referral.

Mark Greany, Atty.

9 Mott Street in Norwalk
854-0311

Rosanna
Would like to forgo referral.

On March 2, 2015, this is what Mark Greany wrote to me about what he recalled about the conversation that had taken place 12 years earlier:

From: Mark Greany <markgreany@yahoo.com>
Sent: Monday, March 2, 2015 8:05 PM
To: legalmalpractice@gmail.com
Subject: D'Atillo matter

This is to confirm the following:

I did not represent the D'Atillo family. I did not provide legal advice to the D'Atillo family in connection with this matter. I did not provide any legal advice to the D'Atillo family regarding any retainer agreements.

My involvement in this matter was limited to recommending the Koskoff firm to the D'Atillo family (on the basis of a recommendation that I received from a friend of mine who practices in the area of medical malpractice). I called the Koskoff firm and told an employee there that I was not interested in a referral fee, and accordingly I would appreciate the professional courtesy of having them discount the fee to the D'Atillo's. I don't remember if the employee was a male or female, or whether it was an attorney that spoke with me.

I did this out of compassion for the D'Atillo family. Domenic D'Atillo's sister Rosanna [redacted] was the "Nanny" to my son [redacted] at the time. She was like a family member to me, my wife and my son.

Best Regards,

Mark

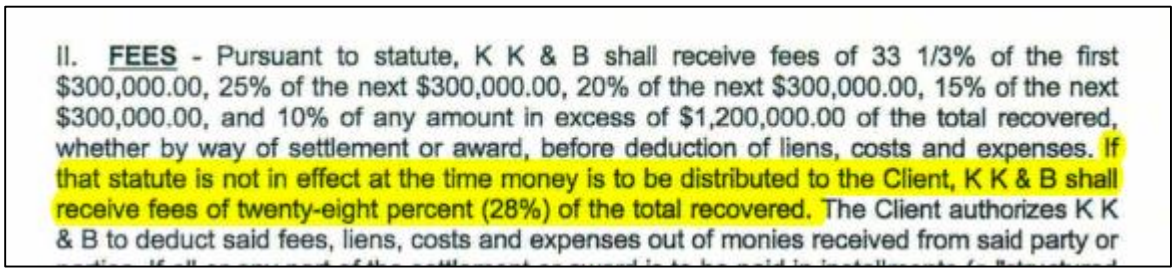
Gedulin & Greany
Attorneys at Law
12526 High Bluff Drive, Suite 300
San Diego, CA 92130

In fact, Greany's recollection in 2015 exactly mirrors the contemporaneous notes above that Michael Koskoff created on March 12, 2003 immediately after their phone conversation. Michael Koskoff even wrote down Rosanna's name. Koskoff did not write down anything about waiver, sliding scale, complexity of the case, Salerno, CTLB, 28%, or anything else he now claims he discussed with Greany (KKB pg. 6-7). Koskoff also failed to note the following:

> Notwithstanding the case law, Attorney Greany expressed a concern about including a waiver provision in the fee agreement when it was not specifically provided for in the statute. Attorney Koskoff was confident that a waiver provision would be added in a future version of the statute, and he advised Attorney Greany of this. He explained that a modification to the statute to specifically allow for a waiver of the sliding scale had been in the works, which he knew based on KKB's participation in the CTLA. Attorney Koskoff and Attorney Greany discussed and agreed that the D'Attilos would pay KKB 28% of any recovery, if at the time the funds were disbursed, the present

> statute was amended to contain a waiver of the statutory sliding scale. **Based on this agreement, Attorney Koskoff revised the KKB standard fee agreement** ...

While that is a wonderfully detailed recollection of a conversation that had taken place 12 years earlier, it is completely at odds with the contemporaneous phone notes that Michael Koskoff wrote right after the conversation actually took place. It is also noteworthy that Michael Koskoff states that he is the one who personally revised the agreement to incorporate this provision that "the D'Attilos would pay KKB 28% of any recovery, if at the time the funds were disbursed, the present statute was amended to contain a waiver of the statutory sliding scale." Putting aside whether such a provision would be enforceable, this is what Michael Koskoff himself actually wrote in the Retainer Agreement that was signed by KKB and the D'Attilos:



II. **FEES** - Pursuant to statute, K K & B shall receive fees of 33 1/3% of the first $300,000.00, 25% of the next $300,000.00, 20% of the next $300,000.00, 15% of the next $300,000.00, and 10% of any amount in excess of $1,200,000.00 of the total recovered, whether by way of settlement or award, before deduction of liens, costs and expenses. If that statute is not in effect at the time money is to be distributed to the Client, K K & B shall receive fees of twenty-eight percent (28%) of the total recovered. The Client authorizes K K & B to deduct said fees, liens, costs and expenses out of monies received from said party or

That the defendants are creating a completely fictional account can be seen in the equally self-serving recollection allegedly made by Joel Lichtenstein. Even though the respondents claim they absolutely believed that the D'Attilos were being represented by Mark Greany, Mr. Lichtenstein had no qualms about meeting with the D'Attilos privately without their alleged counsel being present and without obtaining any waiver that Lichtenstein could meet with them. See R.P.C. 4.2. The truth is they were not represented by Mark Greany and Lichtenstein knew that. However, Mr. Lichtenstein's account is also extremely damaging to the respondents' "defense." Mr. Nuzzo recounts Lichtenstein's unsworn version (pgs. 7-8):

> On March 21,2003 the D'Attilos met with Attorney Lichtenstein and his paralegal to sign the fee agreement…[A]s was Attorney Lichtenstein's practice, he also reviewed the terms of the revised fee agreement with the D'Attilos, including the sliding scale and the fact that case law permitted clients to opt out. **He also discussed with the D'Attilos his expectation that the statute would be amended soon to permit a waiver and that assuming that happened, KKB's fee would be 28%, a reduction from their normal 33 1/3%, and that this is what the fee agreement provided for**. The D'Attilos agreed and signed the fee agreement and authorizations to obtain medical records.

Though Joel Lichtenstein did not have the benefit of the "detailed" contemporaneous notes taken by Michel Koskoff to refresh his memory, Lichtenstein's almost word for word identical "testimony" creates a major problem for the respondents. Lichtenstein has been an attorney since 1964 (Koskoff since 1966), and now in June 2015 claims to have gone over the agreement in detail on March 21, 2003 with the D'Attilos, including specifically pointing out the Retainer Agreement would require a 28% fee when the statute was "amended soon to permit a waiver." In other words, Lichtenstein and Koskoff, world class attorneys who in 2003 had 76 years of legal experience, both failed to notice that what they claimed that they meant to write:

> *Clients will pay KKB 28% of any recovery, if at the time the funds are disbursed, the present statute is amended to contain a waiver of the statutory sliding scale….*

was actually written this way:

> *"If that statute is not in effect at the time money is to be distributed to the Client K K & B shall receive fees of twenty-eight percent (28%) of the total recovered."*

The fantasy retainer agreement requires an actual amendment to be in effect, while the actual agreement requires the statute not to be in effect. The two concepts are incompatible. Even if the Panel believes that it is remotely possible for KKB's story to be anything other than concocted, it does not change the fact that there is probable cause to find that the respondents defrauded the D'Attilos, two probate courts and a guardian ad litem because the retainer agreement itself does not have the provision Lichtenstein and Koskoff claim they had intended to put in there.

Even worse, or at least in keeping with the consistently false representations of the respondents, they are taking a position in response to the grievance that is directly contradicted by the position they have taken in the civil case. For example, during oral arguments on a motion to stay in Superior Court, respondents' counsel stated as follows:

5 The plaintiffs ignore a portion of the
6 retainer agreement which states if that
7 statute is not in effect at the time the
8 money is to be distributed to the client
9 KKB shall receive fees of twenty-eight
10 percent.
11 And, second, the plaintiffs are citing
12 to a 2005 version of 52-21c. That statute
13 contains subsections requiring a specifitc
14 waiver to be executed to waive the statutory
15 fee cap. And it also contains another
16 subsection providing that an attorney who
17 seeks the higher fee isn't entitled to any
18 fee.
19 **The 2005 version of the statute,**
20 **however, is not applicable to the 2003**
21 **retainer agreement and doesn't provide any**
22 **basis or recovery.**

That is directly contradictory to the position respondents are taking in this grievance where respondents assert:

> [7] As will be discussed below, the 2005 version is only relevant to the extent that it was the 2005 version of the statute specifically allowing for a waiver of fees that triggered KKB's fee under the fee agreement.

It is not possible for the 2005 amendments *not* to be applicable to the 2003 retainer agreement as KKB argued in Superior Court, and, at the same time, as KKB argues to this Panel, the 2005 amendments actually trigger the 28% fee. However, even without this material contradiction, on page 10 the respondents acknowledge that all is not well with their newly concocted defense:

> Although the agreement between Attorney Koskoff and Attorney Greany was that if § 52-251c were amended to include a waiver provision, the fee would be 28%, admittedly the fee agreement does not specifically spell this out.

That is a masterpiece of disingenuous understatement. The March 21, 2003 agreement not only does not spell that out, it does not say it, imply it, or mean it, in any manner, shape, or form. Instead, the respondents invite this Panel to rewrite the agreement based upon the respondents' "evidence" that Mark Greany engaged in this detailed negotiation but just forgot to mention it in his March 2015 email, perhaps in much the same way that Michael Koskoff forgot to

mention it in his phone notes that he wrote several minutes after he got off the phone with Mark Greany in 2003. And, oh yes, both Koskoff and Lichtenstein, attorneys who at the time had 76 years of legal experience, neglected to actually write the provision as they claim it was negotiated. Therefore, respondents suggest that this Panel should ignore the Retainer Agreement and not only rewrite it so the respondents are entitled to get $7 million in legal fees, but to agree with the respondents that by rewriting the agreement to mean something entirely different than what it says they will also be rescued from ethical violations and potential criminal liability as well.

Not surprisingly, the respondents misstate the law. Parole evidence cannot be used to vary or contradict the terms of the contract. *TIE Communications, Inc. v. Kopp,* 218 Conn. 281, 288, 589 A.2d 329 (1991). Contract language is unambiguous when it has a definite and precise meaning about which there is no reasonable basis for a difference of opinion." *Christian v. Gouldin,* 72 Conn.App. 14, 20, 804 A.2d 865 (2002). (Internal quotation marks omitted.) "**A court will not torture words to import ambiguity where the ordinary meaning leaves no room for ambiguity, and words do not become ambiguous simply because lawyers or laymen contend for different meanings**." *Mallozzi v. Nationwide Mutual Ins. Co.,* 72 Conn.App. 620, 628, 806 A.2d 97, *cert. denied,* 262 Conn. 915, 811 A.2d 1292 (2002) (Internal quotation marks omitted.)

Moreover, the repeated claims of the respondents that "KKB would never have agreed to, and did not agree to, accept this complex case for a fee based on the statutory sliding scale" (pg. 2) is also a demonstrable lie since this is what the March 21, 2003 retainer agreement states:

> II. **FEES** - Pursuant to statute, K K & B shall receive fees of 33 1/3% of the first $300,000.00, 25% of the next $300,000.00, 20% of the next $300,000.00, 15% of the next $300,000.00, and 10% of any amount in excess of $1,200,000.00 of the total recovered, whether by way of settlement or award, before deduction of liens, costs and expenses. If that statute is not in effect at the time money is to be distributed to the Client, K K & B shall receive fees of twenty-eight percent (28%) of the total recovered. The Client authorizes K K & B to deduct said fees, liens, costs and expenses out of monies received from said party or parties. If all or any part of the settlement or award is to be paid in installments (a "structured settlement") the fee shall be based upon the present cost of such settlement or award; all fees, liens, costs and expenses shall be paid from the first monies received.
>
> It is agreed that this employment is on a contingent fee basis. If no recovery is made, the Client shall not owe K K & B any sum as attorneys' fees or repayment of costs.

That is, word for word, the sliding scale of 52-251c (except KKB use numerals rather than letters for the numbers):

> (b) In any such contingency fee arrangement such fee shall be the exclusive method for payment of the attorney by the claimant and shall not exceed an amount equal to a percentage of the damages awarded and received by the claimant or of the settlement amount received by the claimant as follows: (1) Thirty-three and one-third per cent of the first three hundred thousand dollars; (2) twenty-five per cent of the next three hundred thousand dollars; (3) twenty per cent of the next three hundred thousand dollars; (4) fifteen per cent of the next three hundred thousand dollars; and (5) ten per cent of any amount which exceeds one million two hundred thousand dollars

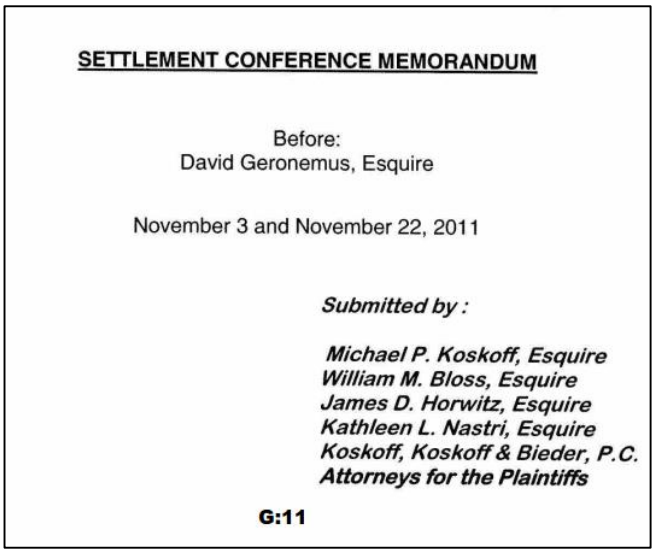
Whether the politically connected Koskoff firm was hoping to repeal tort reform or not (see their Exhibit #7 and CTLA website), the bottom line is that they have lied to this Panel that they viewed the D'Attilo medical malpractice case as complex (see Point II), and they have admitted that they do accept cases on a sliding scale (pg. 6, n.11):

> [11] Although KKB has accepted some tort cases based on the sliding scale, they would not have done so in a difficult medical malpractice case like this.

II: RESPONDENTS' FALSE CLAIMS OF COMPLEXITY AND THE SLIDING SCALE:

On page 1, the respondents write: "This grievance arises from KKB's representation of the Complainants, Domenic and Cathy D'Attilo and their son, Danny, in connection with a **complex medical malpractice action**…." KKB pg. 1. (All emphases in quotations are added). This claim that the D'Attilo medical malpractice case was complex is repeated at least 10 times throughout the KKB Response. *See, e.g.*, pgs. 2, 4, 5, 6, 7, 9, 11, 25.

On page G:11 of the exhibits previously submitted to this Panel by the undersigned, there are some excerpts from the Settlement Conference Memorandum submitted by Michael P. Koskoff, William M. Bloss, James D. Horwitz, Kathleen L. Nastri, and KKB:



SETTLEMENT CONFERENCE MEMORANDUM

Before:
David Geronemus, Esquire

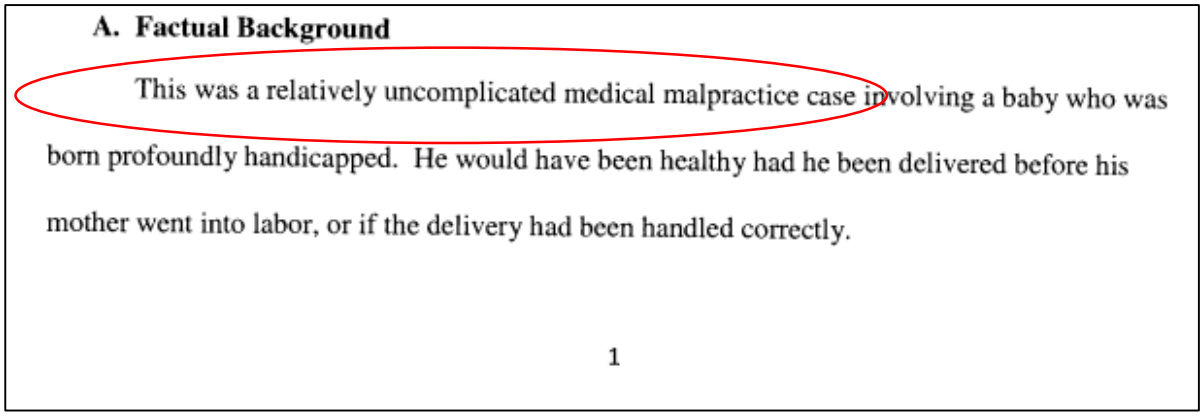
November 3 and November 22, 2011

Submitted by :

Michael P. Koskoff, Esquire
William M. Bloss, Esquire
James D. Horwitz, Esquire
Kathleen L. Nastri, Esquire
Koskoff, Koskoff & Bieder, P.C.
Attorneys for the Plaintiffs

G:11

The exhibit excerpts previously submitted to the Panel began with page 2 of the Memorandum (G:12 to G:16). I did not include page 1 of that Memorandum in the grievance exhibits, but here is the relevant excerpt from the very first page of the Settlement Memorandum signed by four of the respondents:



A. Factual Background

This was a relatively uncomplicated medical malpractice case involving a baby who was born profoundly handicapped. He would have been healthy had he been delivered before his mother went into labor, or if the delivery had been handled correctly.

1

That was written *after* two trials, *after* all the discovery, and *after* the two day mediation. That is just one of many examples I could give that there is far more than probable cause that the respondents are deliberately lying to this Panel. Thus, all of their arguments that they would never have taken this case on a sliding scale because it was complex should not only be disregarded, but should be used against the respondents because they are not being truthful as this Panel can see just by looking at the March 21, 2003 Retainer Agreement.

III: THE NOVEMBER 29, 2011 EMAIL: A SMOKING GUN THAT ESTABLISHES NASTRI DEFRAUDED THE D'ATTILOS

First, to answer the respondents' query, **the D'Attilos will testify under oath that the conversation on January 9, 2012 as described in the grievance complaint took place on January 9, 2012**. If I am permitted to formally reply with exhibits and on all issues, I will provide a sworn affidavit from a third-party well known to KKB who will confirm that this conversation took place just shortly before the final settlement with the insurance company.

The November 29, 2011 email (respondents' Exhibit #30) concerns a different conversation, an email that was never turned over to the undersigned until now, which is one of the reasons why this Panel should order respondents to turn over everything they have since this particular email actually establishes at least two things (1) that Kathleen Nastri defrauded Cathy D'Attilo by falsely telling her that the Retainer Agreement permitted KKB to deduct 28% in legal fees, and (2) that the respondents are even willing to lie to this Panel about the contents of documentary evidence submitted to this Panel. For example, on page 15 the respondents claim:

> What is critical regarding this email and in complete contrast to the statements made in the grievance complaint is that there is no doubt that: (1.) the D'Attilos had in their possession a copy of the fee agreement at least as of November 29 (but likely sooner since they obviously questioned the 1/3 fee mentioned); (2.) **The D'Attilos questioned whether the fee was 28% or 33 1/3%**, and (3.) The D'Attilos reviewed it sufficiently enough to be concerned that KKB's post verdict efforts would cause an increase in the agreed to 28% fee. This close attention by the D'Attilos was consistent with their prior hands on conduct throughout the litigation.

This is what Nastri actually wrote in her email:

> Just got off the phone with Kathy D. told her there had been no progress/news on the settlement negotiations; that the last we knew $18 million was the limit of the authority. **I told her** we were hopeful that there would be an increase in the offer, but that we were dealing with a board, and an insurance company that was being asked to pay more than 10x its policy limits. I asked her to be patient. **I also told her that she was correct and that was wrong about the fees when I assumed all along it was 1/3**. **I told her they had negotiated a 28% fee, which would save Danny close to a million dollars if the case settled for $18 million**. **I also told her** that she did not need to worry about the language in the fee agreement that it does not cover our work after the verdict; that we were continuing to work under the terms of the original fee agreement, and were not looking for any change/increase based on work since the verdict. She seemed to understand both the settlement status and the fee agreement.

The smoking gun statement in this email is that Nastri writes: "I also told her that she was correct and that I was wrong about the fees when I assumed all along it was 1/3. **I [Kathleen Nastri] told her [Cathy D'Attilo] that they had negotiated a 28% fee**…. "

There is nothing in this email stating that Cathy ever questioned whether it was 28% or 33 1/3% as claimed by the respondents (yet a further indication of how they are misrepresenting the facts to this Panel). The email indicates only that Cathy questioned whether it was 33 1/3%. Rather, this email is the smoking gun documentary evidence that Ms. Nastri lied to Cathy and told Cathy that the fee was 28%. This email documents that it is Kathleen Nastri is telling Cathy what is in the retainer agreement about the other way around. That is not evidence that Cathy had a copy of it, **and the D'Attilos will testify under oath that they did not have a copy of it**.

Perhaps more significantly is the last sentence in the email: "[Cathy] **seemed** to understand both the settlement status and the fee agreement." KKB never followed up any written confirmation of this issue, never confirmed that, in fact, Cathy, fully understood, never confirmed with KKB's other client Domenic (who only went as far as 11th grade) also

understood. Of course, Nastri mentions nothing in this email to the other KKB attorneys about what is now their only preposterous defense-- that the 28% fee went into effect because the 2005 amendment included a waiver. In fact, the respondents now admit that the D'Attilos apparently did not understand. For example, on page 15 respondents write:

> **The D'Attilos continued to have questions about the fee agreement, which they discussed in additional conversations with Attorney Nastri between November 29 and January 4, prior to the last mediation session scheduled for January 11**. Contrary to the allegations in the grievance complaint, rather than trying to trick or confuse the D'Attilos, **Attorney Nastri wanted to be sure that they understood the fee agreement that they had previously signed many years earlier because they were getting close to settling the case**. To make a decision, they would need to understand how much they would receive after costs and attorneys' fees were deducted.

And then, on page 16 the respondents write:

> At the January 4 meeting, Attorney Nastri again confirmed the D'Attilos understanding of the fee agreement to be sure they understood why KKB would be paid 28%. **In simple terms, Attorney Nastri explained that KKB was due 28% if at the time funds were paid, the statute contained a waiver provision. She further explained that the statute in effect when they signed the agreement did not have a waiver provision but that later a waiver clause was added to the statute**. She was assured by the D'Attilos that they understood the terms of the fee agreement.

Allegedly, just as Joel Lichtenstein claimed he had done 12 years earlier, Kathleen Nastri carefully went over the Retainer Agreement with the D'Attilos and even brought up the issue that the retainer agreement says that 28% would be due "if at the time funds were paid, the statute contained a waiver provision." Except, she was the third Super Lawyer KKB attorney who failed to notice that the retainer agreement did "not specifically spell this out." Even though the agreement was missing the actual term, and although allegedly wanting to make sure the D'Attilos understood the agreement, there is no follow up email explaining this, only Nastri's claim that the D'Attilos assured them they understood the waiver issue. But why was this explanation on January 4 necessary? After all, the respondents are arguing that the November 29, 2011 conversation proves that the D'Attilos had a copy of the retainer agreement.

Although the D'Attilos will testify under oath that they did not have a copy of the retainer agreement, the reality is that it is irrelevant whether they had it or not. **This Panel has a copy of the Retainer Agreement but that is not stopping the respondents from lying to this panel about what it means and what occurred.** And given the fact that the respondents know that the Retainer Agreement admittedly does not include the very provision they claim it should have, why did they not send the same obviously necessary explanation to Colleen Fries along with the retainer agreement to explain the 28%? Because KKB only just came up with this fiction for the purposes of this grievance.

Disturbingly, this November 29 email was sent to Michael Koskoff, James Horwitz, Bill Bloss, and Josh Koskoff. Why they all were interested in this particular issue? In fact, what this email shows is that Nastri had succeeded in convincing Cathy that the fee was 28% and informed four other partners at the firm. Thus, all of them knew that Nastri had lied to Cathy. Another reason why the panel should order all the documents withheld turned over is because this email is the first indication I have received that Josh Koskoff was involved in this. While it may be too late to include him in the complaint, it is well within the statute of limitations for the grievance to include him if in fact he had a greater role in this than has been previously disclosed.

V: OTHER ISSUES: MOVE TO BETHEL, LAWSUIT FUNDING AND THE $632,000: UNANSWERED QUESTIONS REMAIN

MOVE TO BETHEL: There are a number of issues that I will raise and exhibits that I will submit related to the Norwalk Probate Court move in a reply. For now, I will only comment, as can be seen from Exhibit 66, the letter from Cathy to a number of her former attorneys, the move to Northern Fairfield County did not result in any more autonomy or proper allocation. Quite the opposite, the respondents and Day Pitney had created a nightmare for the D'Attilos. In

other words, the respondents never followed through on the purported reason for the respondents' advice to move. In fact the only thing that changed by the move from Norwalk to Bethel was that Colleen Fries was off the case and the Retainer Agreement was no longer on the radar screen of the court. Instead of having to report to the guardian ad litem, the D'Attilos had to report to Brad Gallant and Day Pitney who charged the D'Attilos, and Danny approximately $160,000 over 18 months.

The respondents provide no documentary evidence to support any of their claims about Judge DePanfilis (who was reelected in November 2014 by a 60% to 40% landslide), or their claims about Colleen Fries. To the contrary, the respondents misrepresent to this Panel that the trust being created by Gallant was a special needs trust that would require any extra or oversight. *See, e.g.*, pg. 19.

That the respondents and Day Pitney utterly failed to do their job can be demonstrated by the recent rulings of the Probate Court in the past month or so where the D'Attilos have been able to terminate the trust, become sole trustees, be freed from having to pay outrageous trustee fees, got enough funds to build a specially designed house for Danny, and have substantially more discretion over funds, among other things. If the defendants were telling the truth about their reason to recommend the move to Northern Fairfield, they would have accomplished all this and more in April 2012.

LAWSUIT FUNDING: On November 14, 2014, I wrote to Mr. Nuzzo asking him to explain what if any relationship there was between KKB and Lawsuit Funding. It was not until I received a copy of the grievance complaint in June 2015 that he finally answered my question where he alleges there was no connection at all. Mr. Nuzzo then goes ahead to criticize me by claiming I had no basis to raise the issue. The basis was the dead silence from the respondents on the issue. However what is still an issue is the nearly 7 months delay in providing this information which I requested on behalf of the respondents' former clients. That failure to provide the information in a reasonably timely fashion should also be held to a violation of the ethical code.

Moreover, respondents do not explain what happened regarding Mr. Bair's email that he believed he could get a similar deal at a 10 to 15% annual interest rate rather than the nearly 30% interest rate. That question remains unanswered.

ACCOUNTING FAILURES: To this date, the respondents have not provided any documentation that their former clients can review to determine whether the $632,138.87 of legal costs charges were justified or accurately tabulated. The documents they turned over were mostly checks, many of which are illegible, and a significant number are very large checks with payments for a number of clients, and it is impossible to determine the accuracy or validity of their charges. They have not turned over the underlying billing statements for approximately 99% of the $632,138.87 of legal costs charged to the D'Attilos.

Significantly, the respondents failed to disclose to this Panel that on May 19, 2015, after taking months to review their records, **KKB admitted that they owed the D'Attilo's $1,636.59**. At this point it is impossible to determine the accuracy of their calculation but it does raise yet another significant issue.

Attorneys are supposed to track client funds, not to the closest $1636.59, but to the penny. The D'Attilo never would have found out about this overcharge, assuming that it is even being accurately stated, but for the persistence I had in repeatedly demanding an accounting. Although the accounting has not been completed since KKB has not turned over any of the underlying billing documents, this Panel should be very concerned as to the accounting procedures at KKB. According to the KKB website, Joel Lichtenstein has reviewed for intake approximately 25,000 medical malpractice cases. If the Koskoff firm only took 10,000 out of the 25,000 cases that Mr. Lichtenstein reviewed, and if they miscalculated expenses were only $1,000 per case, that is $10 million extra pocketed by KKB. Their complaints about having to compile the information only underscores that the firm apparently has no system set up for assuring the proper handling of client trust funds when it comes to expenses.

VI: CONCLUSION

On page 25 to 26 the respondents write "the doctor had insurance coverage of no more than $4 million, which made the collection of $25 million, six months after the verdict from the doctor's insurer, miraculous. The result achieved by the KKB lawyers was based exclusively on their extraordinary technical and strategic skills." Perhaps the respondents decided that they were also capable of miraculously turning a sliding scale worth $2.6 million into a 28% fee worth $7 million.

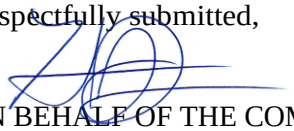
However, KKB will require far more than a miracle to avoid the only conclusion that can be reached based upon the documentary evidence: they deceived the D'Attilos, two probate courts, the guardian ad litem, and now, they are attempting to deceive this Panel with a preposterous fabricated story. As Justice Vertefeuille wrote when a Superior Court judge: "The attorney as fiduciary bears a two fold burden in dealings with the client. First, the attorney bears the burden of proving fair dealing with the client. Secondly, the attorney bears a higher burden of proof than the customary standard; **the attorney must prove fair dealing with the client by clear and convincing evidence**." *Mahaney, Geghan & Roosa v. Baker*, No. CR 970138281, 1999 WL 367804, at *1 (Conn. Super. May 27, 1999). *See McKnight v. Gizze*, 107 Conn. 229, 140 A. 116, 118 (1928) ("dealings between an attorney and his client **are held, as against the attorney, to be prima facie fraudulent**, that is to say, the burden is not upon the client to establish fraud and imposition, but the burden rests upon the attorney to show fairness, adequacy and equity."

By taking a position that is contrary to the documentary evidence and even basic logic, the respondents apparently have decided to go all in and double down, in the hope that they can defraud this Panel just as they defrauded the D'Attilos, two probate courts, and a guardian ad litem. After all, the penalty for lying is a lot less than the penalty for stealing millions of dollars, so presumably respondents do not believe they have anything to lose.

For these and many other misrepresentations which need to be corrected in order for the Panel to reach a just decision, the complainants respectfully request that the respondents be ordered to produce all documents not turned over so far, and permit the complainants reasonable time to review these documents and submit a reply to the Panel.

Finally, I respectfully request that any future decision be sent via email (legalmalpractice@gmail.com) and/or facsimile (815-846-1664) rather than or in addition to by mail, since I will be away various times during the summer and I would like to be notified soon as possible of any Panel determination.

Respectfully submitted,



ON BEHALF OF THE COMPLAINANTS,
LAW OFFICES OF HOWARD ALTSCHULER
Howard Altschuler, Esq.
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Howard Altschuler

From: Howard Altschuler <legalmalpractice@gmail.com>
Sent: Tuesday, June 16, 2015 1:26 PM
To: 'Steven.Kulas@jud.ct.gov'
Cc: 'Anuzzo@nuzzo-roberts.com'; 'Michael.Bowler@jud.ct.gov'
Subject: D'Attilo Grievance

TO: Steven P. Kulas, Esq.
Grievance Counsel, Fairfield Judicial District Grievance
12 Bank Street, 2nd Flr. Seymour CT 06483
VIA EMAIL Steven.Kulas@jud.ct.gov and FIRST CLASS MAIL
CC via EMAIL: Anthony Nuzzo, Esq. (Anuzzo@nuzzo-roberts.com) and Michael Bowler, Esq. (Michael.Bowler@jud.ct.gov)
RE: Grievances #15-0137 through #15-041

Dear Attorney Kulas,

I mailed the original and six copies of my June 15, 2015 letter to you. You should receive it tomorrow (tracking # 9400109699937671608556).

I also want to correct an error in the second paragraph of page two of my June 15 letter: the Grievance Panel that Attorney Bloss serves on received and returned the Day Pitney grievances, not the grievances for the Koskoff respondents. As I understand it, your Panel received the Koskoff grievances originally, and did not return it for re-assignment. The point of that paragraph remains the same, with that correction. I apologize for the error. I will send the original of this email to you, along with six copies, via first-class mail.

Please let me know if you have any questions.

Sincerely yours,

Howard Altschuler, Esq.
1-234-567-9897
ADMITTED:

STATE COURTS:
- CONNECTICUT
- NEW JERSEY
- NEW YORK
- PENNSYLVANIA

FEDERAL APPEALS COURTS:
- UNITED STATES SUPREME COURT
- 2ND CIR. CT. OF APPEALS
- 3RD CIR. CT. OF APPEALS
- 9TH CIR. CT. OF APPEALS

FEDERAL TRIAL COURTS:
- SOUTHERN DISTRICT OF NEW YORK
- EASTERN DISTRICT OF NEW YORK
- DISTRICT OF CONNECTICUT
- DISTRICT OF NEW JERSEY

FEDERAL BANKRUPTCY COURTS:
- DISTRICT OF CONNECTICUT
- SOUTHERN DISTRICT OF NEW YORK

STATE OF CONNECTICUT
JUDICIAL BRANCH

STAMFORD/NORWALK JUDICIAL DISTRICT
GRIEVANCE PANEL

Eugene J. Riccio, *Grievance Counsel*

P.O. Box 9118
Bridgeport, CT 06601
(203) 367-7440

June 8, 2015

Howard Altschuler, Esq.
21 Perkins Road
Bethany, CT 06524

Re: D'Attilo v. Gallant
Grievance Complaint #15-0142

Dear Attorney Altschuler:

Enclosed is a copy of a letter from Attorney Mark A. Dubois on behalf of the Respondent, Keith Bradoc Gallant, dated May 29, 2015. No response, reply or other submission from you will be accepted, unless specifically requested by the Grievance Panel.

The Panel will be meeting in the near future to consider this Complaint. You will be notified in writing of the Panel's decision.

Very truly yours,

Eugene J. Riccio, Esq.
Counsel to the Panel

EJR:cew
Enclosure

Geraghty & Bonnano, LLC
Attorneys at Law

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MICHAEL S. BONNANO
MARK A. DUBOIS†
PATRICIA A. KING**
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Kimberly J. Hamilton, Paralegal
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*Also Admitted in New York
† Board Certified, Trial Advocate
**Se habla español

May 29, 2015

Eugene J. Riccio, Esq.
Counsel, Attorney Grievance Panel
for the Stamford-Norwalk Judicial District
350 Fairfield Avenue
P. O. Box 9118
Bridgeport, CT 06604-9118

Re: Grievance Complaint No. 15-0142, D'Attilo v. Gallant
Grievance Complaint No. 15-0143, D'Attilo v. Iannantuoni

Dear Attorney Riccio:

I am filing this response on behalf of Keith Bradoc Gallant and Rebecca Iannantuoni, the respondent attorneys in the above-referenced matters. Notwithstanding Complainants' forty-two page narrative, they do not identify a single instance in which Mr. Gallant or Ms. Iannantuoni violated the Rules of Professional Conduct. I am confident that, after reviewing this letter and the materials submitted herewith, you will agree that there is no probable cause that any ethical violation occurred.

I. Introduction.

A. *Background.*

Starting in 2003, Koskoff, Koskoff & Bieder ("KK&B") represented Mr. and Mrs. D'Attilo and their son Daniel in a medical malpractice action for birth injuries that left Daniel severely disabled. KK&B ultimately achieved a Twenty-five Million Dollar ($25,000,000) settlement in January 2012. In 2003, in connection with that litigation, the D'Attilos and KK&B had entered into a contingency fee agreement. Upon settlement, the D'Attilos signed a one-page Settlement Statement that provided, inter alia, for KK&B to receive a 28% contingency fee. At the heart of these grievances is the D'Attilos' claim that KK&B charged an improper contingency fee.

Mr. Gallant and Ms. Iannantuoni, both highly experienced and well-regarded trusts and estates attorneys at the firm of Day Pitney LLP ("Day Pitney"),[1] represented Mr. and Mrs. D'Attilo in connection with Probate Court proceedings that followed the January 2012 settlement of the medical malpractice action.

Mr. Gallant and Ms. Iannantuoni had no role in the underlying medical malpractice action, no role in the settlement negotiations between the medical malpractice insurer and KK&B and the D'Attilos (the "D'Attilo-KK&B settlement"), and no role in determining the amount of KK&B's contingency fee. Mr. Gallant and Ms. Iannantuoni's representation of the D'Attilos began only after the medical malpractice action had been settled and years after the contingency fee agreement had been signed.

Mr. Gallant and Ms. Iannantuoni's initial representation of the D'Attilos was limited to seeking Probate Court approval of the D'Attilo-KK&B settlement, establishing a special needs trust ("Trust") for Daniel's share of the net settlement proceeds and the related guardianship proceedings, all of which took place between February and April 2012. In accordance with the wishes of the D'Attilos, beginning in April 2012, Mr. Gallant agreed to serve as the Court-appointed Trustee of Daniel's Trust. At the D'Attilos' request, he submitted his resignation to the Court in August 2013. During this same time, in addition to Mr. Gallant's fiduciary services, Day Pitney provided legal services to the Trust including representing it in multiple real estate matters.

Mr. Gallant and Ms. Iannantuoni also provided estate planning services to Mr. and Mrs. D'Attilo, at their request and on an emergency basis. That engagement began with urgent emails and telephone calls with Mr. Gallant on Saturday, April 28, 2012 and was completed on May 14, 2012 with the execution of final documents.

At all times, Mr. Gallant was the partner in charge of these matters and Ms. Iannantuoni worked collaboratively with him. A competent and experienced attorney in her own right, Ms. Iannantuoni acted under the supervision of Mr. Gallant, who assumed responsibility for all professional judgments in these matters.[2]

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[1] *See* Exhibit 1 (Relevant Experience and Qualifications of Mr. Gallant and Ms. Iannantuoni).

[2] Ms. Iannantuoni is barely mentioned in Complainants' lengthy Consolidated Statement of Facts. Aside from listing her and her credentials on pages one and two, and twice pointing out that she has twelve years of practice experience, paragraphs 148 and 267, Complainants reference Ms. Iannantuoni in only two other of the 371 numbered paragraphs in their Statement. They assert, inaccurately, that Ms. Iannantuoni attended a February 29, 2012 meeting with Complainants and KK&B lawyers, paragraph 147, and, ["o]n information and belief," that she attended "at least one" meeting during which they allege a conspiracy with KK&B "unfolded," Paragraph 295. In fact, Ms. Iannantuoni did not attend any meetings with KK&B lawyers relating to the D'Attilos, whether on February 29, 2012 or at any other time. Complainants also seek to rely on their Exhibit G:1 to support the assertion that Ms. Iannantuoni "appears to have been involved in the drafting" of a Settlement Statement, Paragraph 295. But as Exhibit G:71 itself reflects, Ms. Iannantuoni did not provide the attorneys' fees or any other numbers contained in the Settlement Statement.

B. *Summary Response to Grievance Claims.*

Although not specifically set forth in the D'Attilos' Grievance Complaints or their Consolidated Statement of Facts in Support of the Grievance Filed Against the Respondents, attached to the Grievance Complaints (hereinafter, "D'Attilo Statement"), the D'Attilos appear to allege that Mr. Gallant and Ms. Iannantuoni violated their ethical obligations by:

- allegedly conspiring to protect KK&B's allegedly unlawful contingency fee by inducing the D'Attilos to change their residence so as to remove the guardianship proceedings from the Norwalk Probate Court;

- failing to discover that KK&B charged an allegedly improper contingency fee and that the Settlement Agreement of the medical malpractice action was allegedly deficient;

- alleged but unidentified conflicts of interest;

- preparing allegedly intentionally defective trust and estate planning documents;

- allegedly misappropriating funds, converting funds, engaging in statutory theft, fraud and misrepresentation and failing to safeguard money or property;

- closing the minor's guardianship estate, when all assets had been transferred to Daniel's Trust; and

- charging allegedly excessive fees that allegedly did not comply with the Day Pitney engagement letters.

Each of these claims is without merit, as set forth below:

- Mr. D'Attilo expressed an interest in moving in his first call to Mr. Gallant. It also became clear through their discussion that the D'Attilos desired a high level of discretion over their spending of the funds in Daniel's Trust, including developing a budget in which substantial monthly expenditures would be pre-approved. They also wanted a significant portion of the settlement proceeds for themselves. Based on his decades of experience in Probate Courts, including in the Norwalk Probate Court and with the guardian ad litem ("GAL") appointed by the Court for Daniel, Mr. Gallant properly advised the D'Attilos that that Court and GAL were unlikely to look favorably on those requests. The D'Attilos decided to move to another Probate district. There was nothing improper in such a move, nor was Mr. Gallant's advice based on any effort to avoid Court scrutiny of KK&B's fee. In fact, the entire settlement, including KK&B's fee, was scrutinized by the Probate Court in the district to which the D'Attilos moved. Further, neither Mr. Gallant nor Ms. Iannantuoni was

aware of any issue or claimed issue with KK&B's contingency fee until the D'Attilos filed a civil action in late 2014 raising such an issue. They could not have conspired to achieve something of which they had no knowledge. *See* Sections II. A., D., below.

• When the D'Attilos retained Day Pitney they already had signed a Settlement Statement and an Application to Compromise, both of which reflected a Twenty-eight Percent (28%) contingency fee to KK&B. Given the D'Attilos' prior execution of those documents and the lack of any concern expressed by the D'Attilos about the KK&B fee, as far as Mr. Gallant and Ms. Iannantuoni knew, the terms of the Settlement Statement – including the proposed distributions to KK&B for its fees and costs – were final, agreed and not subject to review or re-negotiation. Moreover, the scope of the Day Pitney representation did not include review of the underlying litigation, the terms of the medical malpractice settlement, or KK&B's fee. *See* Section II. C., below.

• The D'Attilos do not identify any conflict of interest, and no present or potential conflict existed, in any of the D'Attilo matters. In the guardianship proceedings the D'Attilos already had filed a joint Application to Compromise, indicating that both their interests were aligned Daniel's. Similarly, there was no conflict of interest between the D'Attilos relating to their estate planning. Finally, there was no basis to anticipate that Mr. and Mrs. D'Attilo had in mind anything other than Daniel's best interests in using the funds in his Trust to provide for his support.[3] When, in early 2013, Mr. Gallant began to raise concerns regarding the D'Attilos' failure to document expenditures from the Trust accounts to which they had access, the D'Attilos responded by challenging his authority as Trustee to require such documentation.[4] In these circumstances, Mr. Gallant promptly suggested that they consider retaining counsel to advise them. *See* Sections II. B., F., and H., below.

• The D'Attilos fail to identify any defects in Daniel's Trust or their own estate planning including the charitable Foundation. The documents Mr. Gallant and Ms. Iannantuoni drafted served the purposes for which they were designed and were appropriate in all respects. *See* Section II. I., below.

• Although Mr. and Mrs. D'Attilo allege that Mr. Gallant and Ms. Iannantuoni misappropriated funds, converted funds and engaged in certain other types of insidious financial behavior, they fail to provide any examples of such misconduct.[5] The simple truth is that **all** of the funds that were within Mr.

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[3] In Mr. Gallant's experience, many parents of special needs children become very involved in managing their children's' affairs, believing, perhaps rightly, that they know their needs better than anyone else.
[4] Such documentation is necessary so that Trust expenditures can be presented accurately in the Trustee's Accountings. The D'Attilos eventually reimbursed the Trust $31,754.32 for undocumented or improper expenditures. *See* Exhibit 2 (Schedule A, page 5 of Accounting dated June 11, 2013).
[5] As noted elsewhere in this Response, Mr. Gallant and Ms. Iannantuoni had no involvement in the negotiation or calculation of KK&B's contingency fee, nor did they (or Day Pitney) collect, possess, share, or benefit in any way from the KK&B contingency fee. Accordingly, to the extent the D'Attilos allege

Gallant's control were accounted for to the Probate Court and the Court approved **every** financial expenditure at the D'Attilos' request (who were represented by their own independent counsel.) There can be no violation of an ethical duty where the very acts complained of have been reviewed and approved by a court of competent jurisdiction after notice and hearing. *See Disciplinary Counsel v. Smigelski*, 124 Conn. App. 81, 97, *cert. den'd*, 300 Conn. 906, *cert. den'd* 132 S. Ct. 101, 181 L. Ed 28 (2011) (courts of general jurisdiction must give preclusive effect to probate court decrees); *see also* Frank S. Berall, *Attorneys' Fees and Fiduciaries' Commissions in Estate Administration in Connecticut*, 79 Conn. B.J. 179 (2005). *See* Sections II. G., L., M., below.

• The D'Attilos' complaint regarding the closing of the guardianship of the minor's estate reflects a misunderstanding of the applicable law and process. The closing of a minor's guardianship, when all funds have been transferred to a special needs trust, is an administrative act designed to facilitate efficiency. It does not alter the Court's authority to modify or terminate the special needs trust and nothing prevents the parents from petitioning the Court to re-open the guardianship, if one is needed for any reason. *See* Section II. J., below.

• Not only were all of Day Pitney's legal and fiduciary fees entirely consistent with the three engagement letters, but all of the fees they received in these matters (except the D'Attilos' personal estate planning fee) were approved by the Probate Court in proceedings in which the D'Attilos participated and/or were represented by other counsel, and in which they expressed no objection and from which they took no appeals. The Probate Court's approval of the fees is dispositive. *See Disciplinary Counsel v. Smigelski* 124 Conn. App. at 97. *See* Sections II. K., L., M., below.

II. Detailed Response to Grievance Claims.

A. Mr. Gallant and Ms. Iannantuoni Had No Involvement in the Underlying Medical Malpractice Action, the January 11, 2012 Settlement, or the Negotiation and Calculation of KK&B's Contingency Fee, Nor Did They or Day Pitney Share in that Fee.

There is now a dispute between the D'Attilos and KK&B regarding the contingency fee. On December 9, 2014, nearly three (3) years after the $25,000,000 settlement of the medical malpractice action, and more than ten (10) years after the D'Attilos signed their contingency fee agreement with KK&B (the "contingency fee agreement"), the D'Attilos sued KK&B, five (5) individual KK&B attorneys, Day Pitney, Mr. Gallant, and Ms. Iannantuoni.

There is, however, no dispute that on January 11, 2012, more than a month before they retained Day Pitney, the D'Attilos signed a one-page Settlement Statement

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misappropriation, conversion, theft or any other conduct in regard to the KK&B contingency fee, such accusations do not and cannot implicate Mr. Gallant or Ms. Iannantuoni.

indicating their agreement to the deduction of an attorneys' fee of 28% (or $7,000,000), and certain costs, from the $25,000,000 settlement proceeds. D'Attilo Statement, ¶ 67 and Exhibits at G:23a. It is similarly undisputed that on that same day Mr. and Mrs. D'Attilo signed an Application to Compromise Doubtful and Disputed Claim or Action ("Application to Compromise"), to be filed with the Probate Court. D'Attilo Statement, ¶ 67 and Exhibits at G:22.

In their Application to Compromise, Mr. and Mrs. D'Attilo represented to the Probate Court that the net proceeds to the guardianship estate for Daniel's benefit would be Thirteen Million Dollars ($13,000,000), a figure consistent with the Settlement Statement, and payment of a contingency fee of 28%. The Settlement Statement and the Application to Compromise also reflected an allocation of the net proceeds by which Daniel would receive Eighty Percent (80%) of the net proceeds and his parents would receive Twenty Percent (20%).[6]

As the D'Attilos then lived in Norwalk, KK&B filed (on January 12, 2012) the Application to Compromise with that Probate Court. The Court scheduled a hearing for February 29, 2012 and appointed Attorney Colleen Fries to serve as GAL for Daniel.

These events all took place prior to any involvement of Mr. Gallant and Ms. Iannantuoni.

B. The D'Attilos' February 12, 2012 Engagement of Day Pitney for the Guardianship and Preparation of the Special Needs Trust Presented No Present or Foreseeable Conflicts of Interest.

Mr. D'Attilo first contacted Mr. Gallant by telephone on January 24, 2012. He told Mr. Gallant that he had been referred by a long time client, the father of another special needs child for whom Mr. Gallant had established a trust. In matters involving disabled minors, it is typical for the child's share of the settlement proceeds to be placed in a special needs trust.[7] Mr. Gallant and Ms. Iannantuoni are both well known for their extensive experience in this area. Mr. D'Attilo told Mr. Gallant that he and his wife were interviewing various probate lawyers and asked Mr. Gallant to meet with them at the KK&B offices. This meeting took place, as the D'Attilos requested, on February 1, with KK&B lawyers also in attendance.

The D'Attilos signed an engagement letter with Day Pitney on February 12, 2012, a month after they had signed and filed the joint Application to Compromise, seeking Court approval of the settlement and the Settlement Statement (both of which reflect the KK&B 28% contingency fee and litigation costs).

The D'Attilos have never identified, either in the civil litigation or in these proceedings, an actual (or even potential) conflict that existed at the time the Day Pitney

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[6] The D'Attilos later instructed Mr. Gallant to seek Court approval of an increase in their share of the settlement proceeds from Twenty Percent (20%) to Twenty-five Percent (25%), which he successfully did.
[7] *See, generally, Department of Social Services v. Saunders*, 247 Conn. 686 (1999).

representation began or at any time thereafter. Mr. Gallant had no reason to believe that there was or would be any conflict in the goals of the guardianship representation and preparation of the special needs trust or that Mr. and Mrs. D'Attilo's interests might be in conflict with each other or those of their son. In the absence of any disagreement concerning the goals of the representation, Mr. Gallant (and Ms. Iannantuoni) had no reason to seek consent to some theoretical potential conflict that no one anticipated, and that, in fact, never arose. Moreover, Day Pitney's engagement letter properly stated that the representation would be "joint" and "should one of you consult with me separately, I would be obligated to disclose the contents of that conversation to the other."

Rule 1.7 permits joint representation of clients who have congruent and aligned interests unless they are directly adverse on some issue or in such circumstance where the interests of one client or a third party materially limits the ability of the attorney to zealously and loyally represent the other. There was no such conflict when the D'Attilo guardianship representation began and no conflict or appearance of such conflict at any time before it concluded in May 2012.

C. The Scope of the Guardianship Representation Did Not Include Review of the Underlying Litigation, the Terms of the Medical Malpractice Settlement, or KK&B's Contingency Fee.

The D'Attilos' engagement letter with Day Pitney is for representation in connection with the "Daniel Jacob D'Attilo Guardianship Proceeding and Trust Preparation." The letter further provides that Day Pitney is "pleased to have the opportunity to assist your family with planning for Daniel." The D'Attilos only retained Day Pitney to assist them with the necessary guardianship proceedings that were ancillary to the medical malpractice settlement, and to establish a special needs trust for Daniel's share of the settlement proceeds.

On February 9, 2012, Ms. Fries, the GAL, requested from KK&B copies of the complaint in the underlying medical malpractice action; the KK&B/D'Attilo contingency fee agreement; and a list of the litigation costs. After he was told of this, Mr. Gallant requested that he receive copies as well, so that he would have the documents available if the GAL wished to discuss them. Although both Ms. Fries and Mr. Gallant received these documents, Ms. Fries never contacted him regarding them.

The D'Attilos now claim that because Mr. Gallant received an email attaching a copy of the 2003 contingency fee agreement between KK&B and the D'Attilos, he "immediately" would have seen that KK&B was not entitled to the 28% contingency fee. D'Attilo Statement ,¶ 101. The D'Attilos ignore the fact that neither Mr. Gallant nor Ms. Iannantuoni ever undertook to review any aspect of KK&B's conduct in the underlying medical malpractice action, nor to second-guess any aspect of the professional relationship between KK&B and the D'Attilos, including the 2003 fee arrangement. The D'Attilos never told Mr. Gallant or Ms. Iannantuoni that they had any question or concern about the Settlement Agreement or their fee arrangements with KK&B. They

never asked Mr. Gallant or Ms. Iannantuoni to review any aspect of their fee arrangement with KK&B and Mr. Gallant and Ms. Iannantuoni never agreed to, never undertook to, and never did so.[8]

Moreover, absent a request by the clients, it would have been entirely inappropriate for Mr. Gallant and Ms. Iannantuoni to expend professional time – and charge Daniel – for such an inquiry, which would have required them to consult with independent trial counsel. Neither Mr. Gallant nor Ms. Iannantuoni has ever litigated a medical malpractice action and they have never undertaken to evaluate the merits, legal strategies or results of such an action. However, over the last twenty (20) years, Mr. Gallant and Ms. Iannantuoni have been retained in approximately one hundred (100) guardianship and conservatorship matters, typically involving substantial settlements or judgments and the creation of special needs trusts for disabled minors or adults. In such matters, they have never unilaterally undertaken to review or investigate the merits of the underlying litigation, the settlement terms or the fees to which the litigants and their trial lawyers have agreed. The tasks for which the D'Attilos retained Day Pitney were to present the already agreed-upon settlement (including trial counsel's fee and litigation costs) to the Probate Court along with the guardians' plan to establish a special needs trust and utilize the proceeds in the disabled minor's beneficiary's best interest.

This division of responsibilities between trial counsel and trust/probate counsel is fundamental. Mr. Gallant and Ms. Iannantuoni review only those aspects of the litigation experts' reports and trial pleadings that assist with planning for the best interest of the minor child. This is underscored by the fact that Mr. Gallant and Ms. Iannantuoni requested copies only of such litigation materials as would be necessary to respond to questions from the Court and/or GAL and would be helpful in planning for Daniel. Thus, for example, they have never seen (and have had no reason to see) the confidential Settlement Agreement or (except for the portions the D'Attilos have attached to their civil complaint and Grievance Complaints) any of Attorney Wood's commentary thereon. Nevertheless, the D'Attilos now claim they somehow should have known that the unseen Settlement Agreement was flawed. D'Attilo Statement, ¶¶ 157-163, 324.

The speculative assumptions underlying the D'Attilos' claim of conspiracy and fraud – that Mr. Gallant not only read the 2003 retainer agreement, but, having read it, "immediately" would know that KK&B was not entitled to a 28% contingency fee – are entirely wrong. Neither Mr. Gallant nor Ms. Iannantuoni had any awareness that the KK&B fee was allegedly improper. Thus they could not have engaged in a conspiracy to protect it. The scope of their engagement did not include reviewing the fee and they did not do so. There can be no breach of a duty that never existed, and neither Mr. Gallant nor Ms. Iannantuoni may be found to have violated any ethical Rules because they did not undertake matters outside the scope of their representation.

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[8] Indeed, Mr. and Mrs. D'Attilo concede that until they retained their current counsel, sometime in 2014, none of the many lawyers they had engaged, including litigation counsel, raised any questions about the KK&B fee. *See* D'Attilo Statement, ¶¶ 245, 247, 254, 260.

D. There Was No "Conspiracy" to Protect KK&B's Fee by Removing the Guardianship Proceedings from the Norwalk Probate Court, and It Was Entirely Appropriate for Mr. Gallant to Advise the D'Attilos Regarding the Practices of the Various Probate Courts.

In March 2012, the D'Attilos moved to a new home in Bethel. The D'Attilos now claim that they did not want to move, but that their lawyers, in order to secure KK&B's fee, pressured them into moving from Norwalk. D'Attilo Statement, ¶¶ 85, 106, 108.[9]

The idea of the D'Attilos moving did not, however, originate with Mr. Gallant or Ms. Iannantuoni. Mr. D'Attilo, during his first call to Mr. Gallant on January 24, 2012, raised the possibility that the family might move to a larger and more accessible home. Then, at the initial meeting with Mr. Gallant on February 1, 2012 at the KK&B office, Mr. and Mrs. D'Attilo expressed their concerns about the publicity surrounding the enormous judgment that KK&B had obtained for them and the ensuing undesirable attention they had received as a result. It was in this context that the discussion of a possible move out of Norwalk arose.

Mrs. D'Attilo reiterated their concerns in a February 21, 2012 email to Mr. Gallant, saying "...we do feel it is important for us to get out of town." And in a February 23, 2012 email, Mrs. D'Attilo wrote that they had considered a property in New Canaan, but "price way to [sic] high and to [sic] close to Norwalk." These and a selection of other emails and file notes pertinent to the D'Attilos' relocation are attached. *See* Exhibit 3.

Consistent with his obligation to advise the D'Attilos, Mr. Gallant informed them that the Judges of the different Probate Courts vary in their approaches to the administration of special needs trusts. For example, he advised them that the Norwalk Probate Judge generally is not supportive of the kind of highly discretionary trust budgeting that the D'Attilos desired – where they would have significant funds available for their use without having to obtain detailed, advance approval from the Court. He advised the D'Attilos that the Norwalk Probate Judge generally exercised considerably closer supervision over special needs trust expenditures than Probate Judges in some other Courts.

Further, the Settlement Statement and the Application to Compromise that the D'Attilos had signed before retaining Day Pitney reflected that they were seeking

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[9] Initially, Mr. Gallant was unaware that the D'Attilos were then defendants in a foreclosure action on their Norwalk home (an action in which they were represented by other counsel). At some point, the D'Attilos told Mr. Gallant that the Norwalk house was in foreclosure and they were hoping not to pay a deficiency judgment. In fact, the initial foreclosure action was withdrawn on June 6, 2014, following a dismissal for lack of diligence. The lender then commenced a second foreclosure action in August 2014. Judgment of strict foreclosure entered in the second action in November 2014, with a deficiency of approximately $350,000 assessed against the D'Attilos. At no time did Mr. Gallant or Ms. Iannantuoni have any involvement in either foreclosure action. While the D'Attilos make much of their regret at leaving their Norwalk home, they apparently never pursued the option of returning to that home or resolving the foreclosure action, although they could have done so at any time prior to the foreclosure judgment in 2014, and, by May 2012, had millions of dollars from their own portion of the settlement to do so.

Probate Court approval for an allocation to themselves of 20% of the net settlement proceeds, leaving 80% to Daniel's trust. Mr. Gallant advised them, based on his experience, that, while it was certainly possible, he could not guarantee that the Norwalk Probate Judge would approve an allocation as high as 20% to Mr. and Mrs. D'Attilo from Daniel's settlement.

Mr. Gallant has worked successfully on several matters with Ms. Fries, the Court-appointed GAL, and he views her as both diligent and experienced. However, he did point out to the D'Attilos that Ms. Fries also typically does not support the type of discretionary budgeting the D'Attilos hoped to obtain. Rather, in Mr. Gallant's experience, Ms. Fries usually takes the position that parents should first pay expenses (such as, for example, special needs advocates, durable medical equipment and therapies) and then seek Court approval for reimbursement from the trust. Mr. Gallant believes, and so informed the D'Attilos, that Ms. Fries is strongly of the opinion that parents have the primary obligation to support their disabled children, notwithstanding the availability of funds from a special needs trust. He further informed the D'Attilos that he believed, based on prior experience, Ms. Fries was likely to be particularly unsupportive of discretionary budgeting if, as the D'Attilos were hoping, they received a substantial share of the settlement proceeds.

The D'Attilos provide no support for their allegation that, in advising them regarding his experiences with the Norwalk Probate Court and Ms. Fries, Mr. Gallant was "fabricating [a] non-existent" situation. In fact, after speaking with Ms. Fries, KK&B attorney Kathleen Nastri reported to Mr. Gallant that the GAL viewed him as "too generous" with the parents of children with a special needs trust. In a February 20, 2012 email to Ms. Nastri, Mr. Gallant wrote: "Your comments to me reporting on Attorney Fries perceptions are very troubling (quite apart from the misrepresentation of my view of these trusts and their purposes.) I feel we cannot ignore her (in my view misguided) perspective and the impact it will have on Cathy and Dominic's efforts for Daniel. (We can anticipate that the judge will defer in significant measure to the recommendations of the GAL he has appointed. He has done so in the past.)" As reflected in the email, Mr. Gallant's concern was that the approach of the GAL and the Norwalk Probate Court were incompatible with the D'Attilos' desires to have maximum flexibility in managing their child's affairs.

Over many years of practice, Mr. Gallant and Ms. Iannantuoni have handled numerous matters successfully in the Norwalk Probate Court, which they consider a well-organized and professionally run Court that is accommodating and considerate of all counsel. In describing his experiences with settlement allocations and special needs trust budgets in the Norwalk Probate Court, and with the particular GAL, Mr. Gallant provided information to the D'Attilos that he quite properly believed they needed in order to make a fully informed decision. He also told them that once the Norwalk Court had jurisdiction, it would be unlikely to approve the Trust's transfer to another Probate Court. While this is a procedural issue that varies between jurisdictions, in Mr. Gallant's experience the Norwalk Probate Court generally does not approve such transfers.

Mr. Gallant further advised the D'Attilos that in order to invoke the jurisdiction of any Probate Court, a party must establish the necessary indicia of residence within that Probate District. In his view, the mere execution of a residential lease is not sufficient; such things as voter registrations, vehicle registrations, and updated driver's license addresses must reflect residence within the jurisdiction. Mr. Gallant also wanted to make sure that the D'Attilos engaged with the prospective Board of Education to assure that Daniel's placement at the St. Vincent's-Feroleto Children's Development Center (in Trumbull) would continue without difficulties for the family.

Mr. Gallant did not "veto" Shelton (or any town). In fact, Shelton would have been very convenient to Daniel's school, which is located one town away. The D'Attilos found a property in Shelton that they liked very much, but it was for sale – not rent – and the listing price was in excess of $1,000,000 (in cash). In the absence of a Court approved settlement, the D'Attilos had insufficient funds to make such a purchase. As Mr. Gallant explained in an email to Ms. Nastri about the Shelton house, "There are a lot of issues--including the fact that they can't buy a $1,000,000+ house until they settle the law suit and if the Trust is buying the house the Probate Court must approve the purchase--whatever the lawyers write in a letter to the sellers. I explained how the process works--they cannot use Danny's money without Court approval. They cannot get Court approval until they settle and present a proposal that is approved." A copy of the February 20, 2012 email (part of an email thread that otherwise concerns the structure proposal) is attached as Exhibit 4. Mr. Gallant made the same point regarding advance Court approval to the real estate agent who was strongly urging the D'Attilos to purchase rather than rent a new home. *See* Exhibit 5.

Neither Mr. Gallant nor Ms. Iannantuoni (nor, as far as they are aware, anyone else) directed the D'Attilos to move. The decision was entirely the D'Attilos. Nor was it the case that they needed any kind of "cover" for moving to another jurisdiction. D'Attilo Statement, ¶ 117. But an application to settle the medical malpractice claim had to move forward in a Probate Court somewhere and if the D'Attilos wanted Daniel's Trust administered by a different Probate Court, they had to make and implement a decision about moving. The D'Attilos clearly wanted the proceedings to move forward promptly. As Mrs. D'Attilo wrote to Mr. Gallant in her February 21 email message: "We really want to get this case settle [sic] and funds released so we can move on. We are willing to take this move to get this done we are anxious as everyone to get this to probate." A copy of the February 21, 2012 email is attached. *See* Exhibit 3.

The Application to Compromise already had been filed with the Norwalk Probate Court, and the Court had scheduled a hearing for February 29, 2012. If the D'Attilos were going to move, the Application filed in Norwalk would need to be withdrawn. On February 24, 2012, once the D'Attilos had made the decision to move, but before it was certain that the move could be accomplished and residency in a new town established in a timely manner, KK&B withdrew the Application to Compromise it filed in the Norwalk Probate Court.

Citing an email from Ms. Nastri to Mr. Gallant, the D'Attilos claim that Ms. Nastri "significantly misled the Probate Court . . . by telling the Clerk and the GAL on January 24, 2012 that the D'Attilos were 'contemplating not remaining in Norwalk.'" D'Attilo Statement, ¶ 129 and Exhibit G:47. In fact, Ms. Nastri's actual email is quite different: "Just got a call from Diane at Norwalk Probate Court. She asked why the applications were being withdrawn. I told her many reasons . . . trust documents not complete, clients hadn't decided on structure yet, they were contemplating not remaining in Norwalk due to concerns relating to general knowledge about the size of the verdict, etc. she [sic] said she would let the judge know. As I was typing this email, Colleen called. I told her the same thing." *See* D'Attilo Statement, Exhibit G:47.

Ms. Nastri's communications to the Clerk and the GAL were in fact accurate and appropriate in the circumstances. As of February 24, the D'Attilos had not signed a lease or otherwise finalized the decision to move from Norwalk. It was entirely accurate to say that the move, which was not yet a settled matter, was under contemplation. It also was true that the D'Attilos still had a number of decisions to make and the necessary documents and court filings could not yet be put into final form. Accordingly, regardless of where the D'Attilos were going to live, the matter was not ready for a hearing on February 29. Moreover, it would have been a significant breach of client confidentiality for Ms. Nastri to have disclosed that the D'Attilos and their counsel had concerns about the incompatibility of the D'Attilos desires and the anticipated approach of the Norwalk Probate Court.[10]

The D'Attilos eventually located a house in Bethel that they considered to be an appropriate residence for themselves and Daniel. They signed a lease on February 27, 2012, and moved in early March. This brought Daniel's guardianship within the jurisdiction of the Northern Fairfield County Probate Court.

The D'Attilos' claim, that their lawyers pressured them to move to Bethel because KK&B's fee would not be subject to scrutiny in that Probate Court, is a fabrication that is unsupported by the facts. Moreover, in making such a claim, the D'Attilos disparage the Northern Fairfield County Probate Court and its Judge by suggesting that Court would not fulfill its statutory obligations to Daniel. Nowhere in their submissions do the D'Attilos offer any facts that support their speculation.

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[10] The D'Attilos claim that Ms. Nastri later filed an appearance as "Attorney For Minor Child" ("AMC") in Northern Fairfield County Probate Court in an attempt to thwart the appointment of a GAL in that Court. D'Attilo Statement, ¶¶ 164,166. An AMC is not a GAL and the appearance of an AMC has no effect whatsoever on the appointment of a GAL by the Court. The trial attorney frequently is the AMC in Probate proceedings, because he or she already represents the child in the civil litigation. In addition, the D'Attilos apparently misunderstand the role of a GAL. The GAL is appointed only to advise the court, not to represent the child.

E. The Focus of the Guardianship Representation Was on Decisions Necessary to Plan for Daniel's Future, including the Funding of, and the Budget for, the Trust and the Flow of Net Settlement Proceeds.

The D'Attilos' move from Norwalk was not, from Mr. Gallant and Ms. Iannantuoni's point of view, the focus of their representation. Rather, before the Application to Compromise would be ready for a hearing (in any Probate Court), a number of significant issues remained to be addressed, including:

- resolving whether to structure a portion of the settlement proceeds and if so, how;[11]

- determining the appropriate allocation of the net settlement proceeds between the parents and Daniel's Trust, which included consideration of what allocation to the parents a Probate Court was likely to approve;

- establishing a budget for Daniel's immediate and long-term special needs;

- developing an investment strategy for the cash portion of Daniel's share of the settlement; and

- arranging for repayment of the large (and increasing) litigation loan that the D'Attilos had taken against the forthcoming settlement. (The D'Attilos had indicated their desire to have Daniel's share of the settlement bear responsibility for as much of the loan as possible; this, too, would require Probate Court approval.)

As the D'Attilos considered, and reconsidered, their various options, Mr. Gallant and Ms. Iannantuoni collaborated with them and the attorneys from KK&B on revisions to the Settlement Statement and the Application to Compromise. Mr. Gallant and Ms. Iannantuoni's contributions involved revisions to those portions concerning the flow of money from the net proceeds – that is, the allocation of the proceeds between Daniel's Trust and his parents; whether there would be a structured settlement; and the degree to which repayment of the litigation loan would be shared between Daniel's Trust and the D'Attilos personally.

Throughout March 2012, Mr. Gallant and Ms. Iannantuoni worked with the D'Attilos to finalize the Settlement Statement, the Application to Compromise, the

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[11] The decision whether to structure a portion of the settlement, which is time-sensitive and has significant income tax consequences, was particularly challenging to the D'Attilos. The Internal Revenue Code provides an exclusion from taxable income for amounts paid in respect of personal injuries. Thus, structures purchased at the time of settlement create a tax-free payment stream to injured plaintiffs. However, the decision to structure is difficult because, to preserve the tax benefits, the decision must be both irrevocable and complete before the parties sign the final release. Moreover, in the current economic climate, the payout rate of structures is generally quite low compared to the potential return on other investments. Nevertheless, a guaranteed, tax-free payment stream is attractive to some litigants and deserves the careful consideration that it received in this matter.

Application to Create and Fund the Special Needs Trust, and, especially, the budget, all of which were filed in court on April 2, 2012.

Complainants assert that by participating in the revisions to the Settlement Statement, Mr. Gallant and Ms. Iannantuoni participated in a conspiracy, their theory being that the statement "fraudulently" reflected the 28% contingency fee. Grievance Complaint at 3; D'Attilo Statement, ¶¶ 170-71, 185, 190-91. But, as described above, Mr. Gallant and Ms. Iannantuoni understood the 28% contingency fee to be the result of an agreement between the D'Attilos and KK&B. Neither Mr. Gallant nor Ms. Iannantuoni reviewed the March 21, 2003, contingency fee agreement, and neither had reason to question the fee arrangement reflected on the Settlement Statement of which the D'Attilos signed multiple versions, each time indicating their awareness of and agreement to a 28% contingency fee.[12]

F. There Was No Conflict of Interest in Mr. Gallant Agreeing to Serve as Trustee of Daniel's Trust.

At the D'Attilos' request, Mr. Gallant agreed to serve as Trustee of Daniel's Trust. By letter dated April 2, 2012, he advised the D'Attilos that the fiduciary fee for serving as Trustee would be one-half of one percent (.5%) of the value of the Trust assets (then anticipated to be approximately $12,000,000), which is a standard arrangement.

In his April 2, 2012, letter, Mr. Gallant indicated that the fiduciary services would include "selecting an investment advisor (in consultation with yourselves) . . . monitoring the advisor's performance, preparing Probate Court accountings and budget requests, attending Probate court hearings as required, consulting with you on an on-going basis regarding Daniel's needs and preparing fiduciary income tax returns." The letter also stated that "[t]ypical legal services (such as, e.g., handling a real estate closing or defending or making a claim on behalf of the Trust) are not included in the fiduciary fee."

The D'Attilos assert that the letter concerning the fiduciary fees "had no warning to the D'Attilos of possible conflicts of interest between Gallant's role as a Trustee at the same time he was still representing Domenic and Cathy. And, once again, there was no advice for them to seek independent counsel." D'Attilo Statement, ¶ 175.

Although apparently attempting to raise a further conflict of interest claim, the D'Attilos do not allege that an actual conflict existed between Mr. Gallant's role as Trustee and his representation of them in the soon-to-be-concluded guardianship proceedings, either at the time he became Trustee or at any other time. Again, Mr. Gallant had no reason to believe or anticipate that there was likely to be a conflict between the two roles. It was his understanding that the D'Attilos' primary concern was

[12] The D'Attilos themselves allege that when a KK&B attorney requested, on January 9, 2012, that they agree to a 33% contingency fee, they reminded her that they had "negotiated a lower contingency rate" in 2003, and they did not hesitate to flatly reject, as "crazy," the request for a contingency fee of 33%. D'Attilo Statement, ¶¶ 48-53. Mr. Gallant and Ms. Iannantuoni were unaware of these events until the civil action was filed by the D'Attilos.

Daniel's best interests, and that same interest was integral to both Mr. Gallant's role as Trustee and his representation of the D'Attilos in the guardianship. Accordingly, there was no reason either to provide a "warning" or to advise the D'Attilos to seek independent counsel, and no provision of the Rules of Professional Conduct requires such a warning or advice.

G. *On April 24, 2012, the Probate Court (1) Approved the Settlement, the Distribution of the Proceeds as Set Forth in the Settlement Statement and the Creation of Daniel's Special Needs Trust; (2) Appointed Mr. Gallant as Trustee; and (3) Approved the .5% Fiduciary Fee.*

On April 24, 2012, after a full hearing on the merits, which the D'Attilos attended, Judge Egan granted the D'Attilos' Applications. Pursuant to a revised Settlement Statement, the Judge approved disbursements that included KK&B's contingency fee of 28% ($7,000,000) and an escrow of $50,000 from which KK&B could pay "future costs, including probate-related issues."[13] Judge Egan appointed Mr. and Mrs. D'Attilo as guardians of Daniel's estate, so that they would have the authority to direct his share of the proceeds to his Trust, and approved an allocation of 75% of the net proceeds to Daniel's Trust, and 25% of the net proceeds to the parents individually. The approved distribution also provided that the $330,000 payment for the cost of the litigation loan and other advances would be shared equally between the D'Attilos and Daniel's Trust. Judge Egan appointed Mr. Gallant as Trustee of Daniel's Trust, and approved the fiduciary fee of .5% of the annual value of the Trust assets.

Also on April 24, the D'Attilos obtained approval from the Court for on-going Trust payments to them in the amount of $25,200 per month. Of that amount, $16,500, plus any required employer-paid employment taxes, was to be paid directly to Mr. and Mrs. D'Attilo as a "caregiver stipend."[14] This was the largest parental stipend Mr. Gallant and Ms. Iannantuoni had ever obtained. It gave the D'Attilos an unusual degree of financial flexibility in providing for Daniel. In addition to that, they enjoyed the receipt of their own Four Million One Hundred Sixty-Four Thousand Dollar ($4,164,000) portion of the net settlement proceeds.

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[13] Day Pitney received $33,675.14 from the escrowed funds for its services in the guardianship proceedings. *See* D'Attilo Statement, Exhibits, G:112. The Applications would have been approved as filed, but the D'Attilos, on the day of the hearing, decided they no longer wished to structure any portion of the settlement. Mr. Gallant subsequently prepared and filed an amended Application, and Judge Egan approved that as well. On May 16, 2012, Mr. Gallant filed with the Probate Court a signed revised Settlement Statement reflecting both the removal of the structure and the payment to Day Pitney of $33,675.14 for "Probate Fees and Expenses." Judge Egan accepted and approved the substitute Settlement Statement, which was attached as an exhibit to the Trust Inventory.

[14] The $25,200 also included $1,000 monthly expenditure for "Household Operating Expense"; a $700 monthly expenditure for "Health Insurance"; $1,000 a month for van expenses and insurance; $500 a month for Respite Care; $1,500 a month for "Miscellaneous" expenses; the balance of the $25,200 was designated for personal items, therapies, prescriptions and medical appointment co-payments.

The D'Attilos were an integral part of every aspect of the guardianship process. It was their desires at each stage of the guardianship proceeding – including the selection of the appropriate Probate venue, the drafting of the special needs trust (including the choice of Trustee) and the preparation of the budget (including the monthly stipend from the Trust to Mr. and Mrs. D'Attilo personally) – to which Mr. Gallant and Ms. Iannantuoni repeatedly responded. The D'Attilos reviewed, questioned, and ultimately signed each of the Applications, all of which reflected and implemented their wishes, as well as the Settlement Statement that reflected KK&B's 28% fee. At the April 24 hearing, Judge Egan specifically polled Mr. and Mrs. D'Attilo about whether they were satisfied with the settlement and the arrangements, and they acknowledged their agreement with everything that had been filed on their behalf. If they had any questions or concerns, they did not raise them with Judge Egan.

The D'Attilos now seek to recharacterize this completely transparent process as a "conspiracy," but the facts simply do not support such a claim.

H. There Was No Conflict of Interest in the Estate Planning Services Mr. Gallant and Ms. Iannantuoni Provided to the D'Attilos in May 2012.

On Saturday April 28, Mr. Gallant received an urgent e-mail from Mrs. D'Attilo asking him to call as soon as possible. He spoke with the D'Attilos shortly after 6 p.m. and learned that they wanted him immediately to prepare Wills for them and set up a Foundation in Daniel's honor, impressing on him that it was urgent that this be done quickly. Mr. Gallant and Ms. Iannantuoni brainstormed on the planning and drafting, with significant communication to ascertain the D'Attilos' wishes.

As the estate planning was outside the scope of both the trusteeship and the guardianship proceeding, Mr. Gallant prepared and the D'Attilos signed a separate engagement letter. The engagement letter contained the firm's standard language for joint representation concerning shared communications. Again, the D'Attilos complain that the engagement letter contained "no warning about potential conflicts of interest or advice to seek independent counsel." D'Attilo Statement, ¶ 193. They do not, however, allege that an actual conflict existed between them concerning their estate planning goals. Nor is it possible to discern any conflict between the estate planning representation, the representation in the guardianship proceeding, or Mr. Gallant's service as Trustee. And, again, Mr. Gallant had no reason to believe or anticipate that there was likely to be any conflict. Accordingly, there was no reason either to provide a "warning" or to advise the D'Attilos to seek independent counsel, and no provision of the Rules of Professional Conduct so requires.

The D'Attilos signed the charitable Foundation document on May 4, 2012, and signed their wills ten days later, on May 14 when they were finalized.

On May 4, and again on May 14, the D'Attilos also executed affidavits indicating that they were fully advised of the range of their fiduciary options and that they freely and knowingly chose Mr. Gallant to be Executor and Trustee. See Exhibit 6.

I. The Trust and the Estate Planning Documents Were Properly Drafted and in Accordance with the D'Attilos' Wishes.

Mr. and Mrs. D'Attilo allege that the trust and estate planning documents Mr. Gallant and Ms. Iannantuoni prepared were "woefully deficient and wholly inadequate," and failed "to protect Daniel now and in the future." D'Attilo Statement, ¶¶ 325-27. However, the D'Attilos fail to identify any error or deficiency in the documents Mr. Gallant and Ms. Iannantuoni prepared for them. Furthermore, it is unclear what missing protection the D'Attilos believe should have been provided for Daniel.

The D'Attilos expressly fault Mr. Gallant for not having drafted the Trust "to be terminated at any time by Cathy and Domenic without the need for court intervention." D'Attilo Statement, ¶ 337. This position represents a serious misunderstanding of both the nature of the Trust and the Probate Court's oversight of court-created special needs trusts. A properly drafted (first party) disabled minor's special needs trust cannot be terminated by anyone, including a parent or guardian, without an Order from the Probate Court. Connecticut law is absolutely clear that it is the Court, not a parent or guardian, that exercises this authority.

Under the estate plan created for, and signed by, the D'Attilos, Daniel would, in the event of his parents' death, have the ability to remain in his home. His assets would be available to pay for all of his care needs. In the event that became impossible, the documents are drafted so other appropriate housing and care arrangements in Daniel's best interests also could be provided. The D'Attilos' Wills contain carefully considered (and extensively discussed) guardianship provisions that are not only appropriate and effective, but the only provisions that could serve to protect a minor disabled child in the event both of his parents predecease him, at least where, as here, the child has Twelve Million Eight Hundred Thousand Dollars ($12,800,000) in a special needs trust for his sole benefit.

The D'Attilos also complain that the charitable Foundation, which they requested Mr. Gallant to prepare, failed to protect Daniel. This complaint is misguided. Under their estate plan, and at their request, the charitable Foundation would not be funded until Daniel (and his parents) were **all** deceased. It was never designed to "protect" Daniel. Rather, it was designed, at the D'Attilos' request, to provide charitable benefits to other disabled individuals after Daniel's and their deaths. Mr. Gallant reasonably believed that the D'Attilos understood the nature of the charitable Foundation as the possibility of creating such a Foundation had been raised by Mr. D'Attilo in his first telephone call in January 2012 (presumably as a result of discussion with other counsel).

Complainants articulate only two specific concerns about the charitable Foundation: (1) that the Foundation was created as one that would continue forever; and (2) that Mr. Gallant would be the Trustee, with "total and sole discretion . . . [and] with no guidelines for fees, 'forever.'" D'Attilo Statement, ¶ ¶196-198. These complaints are without any legitimate basis. Charitable foundations generally exist in

perpetuity in order to achieve the charitable goals of those who contribute funds to them. There also are guidelines for fees (and for foundation distributions). Not only are there IRS guidelines, but this type of foundation is subject to statutory oversight by the Charities Unit of the Office of the Connecticut Attorney General.

The charitable Foundation was intended to take effect only after both Mr. and Mrs. D'Attilo and Daniel had died. If the D'Attilos changed their minds about the Foundation, they could easily change the terms of their Wills and elect not to fund the Foundation. The D'Attilos also now complain that, more than a year after they had retained Ms. Crane, then Mr. Jones, then Attorney Paul Ganim, and, still later, Attorney Howard Altschuler, Mr. Gallant was surprised to hear from their counsel regarding the status of the Foundation.

When Mr. Altschuler told Mr. Gallant that his clients were concerned that the Foundation might be funded "by someone" other than the D'Attilos, Mr. Gallant (although doubting the likelihood of such an event) explained that in such circumstances it would not be appropriate for the Trustee unilaterally to terminate it. Mr. Gallant told Mr. Altschuler that, assuming he was still Trustee (Ms. Crane having represented that he had been "removed" from all fiduciary positions in the D'Attilos' estate plans), he would only act if the D'Attilos took responsibility for the consequences of their request. The D'Attilos refused to take such responsibility. Accordingly, Mr. Gallant, at no cost to the D'Attilos, provided documentation that allowed the D'Attilos to terminate the Foundation themselves. It is astounding that the D'Attilos characterize as "unethical" such conduct by the fiduciary of a charitable trust. D'Attilo Statement, ¶ 331.

Complainants have failed to identify any lack of competence or diligence in the drafting of the Trust, the Wills or the Foundation, and have failed to establish probable cause of any violation of the Rules of Professional Conduct in connection with the preparation of those documents.

J. Mr. Gallant Followed Standard Procedures in Asking the Probate Court to Close the Guardianship When All Funds Were Transferred to Daniel's Trust, and the D'Attilos Were on Notice of the Closing.

As a matter of efficiency, it is the standard practice to close a guardianship of a minor's estate once distribution of all assets has been made to a special needs trust. Ordinarily, the guardians of the estate request authority to settle the case and sign all documentation, and the proceeds pass to the special needs trust related to settlement. If there are no further claims by or against the guardianship estate, it is closed. An open guardianship has administrative and accounting requirements, which can lead to expense and confusion. There is no value in keeping the guardianship open, and there is nothing to prohibit its reopening if a reason for doing so arises.

The D'Attilos now claim that they discovered only in 2014 that the guardianship estate had been closed in May 2012. D'Attilo Statement, ¶ 223. However, they were: (1) present at the hearing when Judge Egan raised it with Mr. Gallant; (2) copied on Mr.

Gallant's May 16, 2012 letter to the Probate Court requesting the closure of the guardianship estate, *see* D'Attilo Statement, Exhibits, G:118; and (3) copied on Judge Egan's Decree of May 18, 2012, which included both the factual finding that, "The Guardianship of the Estate is no longer necessary," and the order that "The Guardianship of the Estate #12-750 is hereby closed." A copy of the Decree, which the D'Attilos, as Interested Parties, received directly from the Probate Court, is attached as Exhibit 7.

Even more importantly, the termination of the guardianship estate had no impact on the D'Attilos' rights regarding the Trust. The D'Attilos fault Mr. Gallant for the closure of the guardianship estate, claiming that it "terminated the D'Attilos as guardians of Daniel's estate as well as their right to revoke the trust and transfer Daniel's assets back to the estate, thereby effectively giving Brad Gallant total control over the assets." D'Attilo Statement, ¶ 222, 335. This is simply incorrect. Had they continued as guardians of Daniel's estate, the D'Attilos would not have the unilateral authority or power to revoke the Trust, but would have had to apply to the Court to do so. Indeed, in 2013 the D'Attilos requested a revision to the Trust in which they were named "caretaker" Trustees and in 2015, upon their having been reappointed as guardians of the minor's estate, they applied to the Court to terminate Daniel's Trust.

K. Day Pitney Provided Extensive Legal Services in Connection with Trust Real Estate Matters.

As Mr. Gallant indicated in the April 2, 2012 letter regarding the fee for his services as Trustee, the fiduciary fee would not include Day Pitney's time charges for legal services provided by the firm for matters ancillary to the Trust administration, such as real estate matters.

Contrary to the D'Attilos' assertion that the firm charged over $14,000 for standard real estate closing, D'Attilo Statement, ¶¶ 174, 340, the legal services were extensive. This work involved counseling the D'Attilos regarding multiple potential properties, and numerous interactions with the real estate agent and others. Mr. Gallant and Ms. Iannantuoni worked extensively with the adaptive architect to assess feasibility of these properties as a fully accessible residence for Daniel, and to develop plans for construction to meet the many specifications necessary to facilitate Daniel's care. Despite Mr. D'Attilo's construction background, he and Mrs. D'Attilo both lacked familiarity with the issues that a fully accessible residence presents.

Although the real estate and legal fee invoices were directed to Mr. Gallant's attention as Trustee, he provided a copy to the D'Attilos. *See* Exhibit 8 (copy of December 5, 2012 email forwarding attached billing statements to the D'Attilos). Moreover, the legal fees for the real estate matters were all approved without objection by the Probate Court on August 6, 2013 at an accounting hearing at which the D'Attilos' independent counsel was present. *See* Section II. M., below.

L. *In August 2013, the Probate Court Accepted Mr. Gallant's Resignation as Trustee and Approved All of the Fees Paid to Day Pitney from Daniel's Trust.*

In early 2013, the relationship between Mr. Gallant and the D'Attilos had become strained. As a fiduciary, Mr. Gallant was required to account to the Probate Court for all expenditures from the Trust. Consistent with that duty, he asked the D'Attilos to support their expenditures of Trust funds with appropriate documentation. The D'Attilos apparently found this irksome: in their Grievance Complaint, they fault Mr. Gallant for insisting that they document their withdrawals from the Trust bank accounts to which they had access. D'Attilo Statement, ¶ 322. However, Mr. Gallant's insistence on this is actually evidence of an attorney acting precisely in accord with his fiduciary duties as Trustee.

The D'Attilos had obtained a substantial (25%) portion of the settlement proceeds, in addition to a generous monthly personal stipend from the Trust. Yet, they demanded additional funds from the Trust, and seemed unable to grasp that the nature of a special needs trust is inconsistent with unfettered access by the beneficiary's parents, which they insistently demanded.[15] That Mr. Gallant would not acquiesce in the D'Attilos' demand for ever more discretionary funds is not evidence of "communication issues." Mr. D'Attilo, in particular, left numerous email and voicemail messages berating Mr. Gallant and his staff, repeatedly threatening Mr. Gallant and expressing his displeasure with the fact that he was not able to access the funds in Daniel's Trust to the extent he (incorrectly) believed he was entitled. An example of a text received from Mr. D'Attilo dated February 26, 2013 at 7:44 a.m. follows:

> "Brad domenic I want 100.000 Dollar in TD bank for my son for his car and other need If you can't do that Then I do not need you as my son lawyer You are going By By make it happen If you can't I will do it my Fired"

See Exhibit 9.

When, in February 2013, the D'Attilos began to dispute Mr. Gallant's request for financial documentation, he suggested that they seek counsel to advise them. They did so, but rather than attempting to work with Mr. Gallant in Daniel's best interests, by letter dated March 2, 2013, their new counsel requested that Mr. Gallant resign. Although uncomfortable with resigning simply because he would not accede to the D'Attilos' unreasonable financial demands, after considerable analysis (and in part due

[15] The D'Attilos' withdrawals from the Trust bank accounts to which they had access, and that Mr. Gallant determined were improper, were at the core of the disagreement between the D'Attilos and Mr. Gallant. In fact, the one condition Mr. Gallant placed on his resignation as Trustee was the reimbursement to the Trust of the $31,754.32 that the D'Attilos had taken and would not document as having been used to or for the benefit of Daniel.

to the continuing burden that responding to the D'Attilos placed on the Day Pitney staff) Mr. Gallant decided to offer his resignation to the Probate Court.[16]

Mr. Gallant filed two accountings for his period of service as Trustee. The first, covering the time from his appointment until May 31, 2013, was approved by the Court after notice and hearing on August 6, 2013. The second, covering the time from June 1, 2013 until the date of his resignation was approved by Court Order and Decree dated August 27, 2013. These Accountings reflected all the fiduciary and legal fees and disbursements paid to Day Pitney from the Trust. The D'Attilos were represented by Mr. Jones in connection with both Accountings and no objection was made and no appeal taken with respect to either. Attorney Vincent Freccia, III, whom the D'Attilos had selected as successor Trustee, was also present at the hearing on August 6.[17]

M. Day Pitney's Legal and Fiduciary Fees Were Consistent with the Engagement Letters, and (other than for Mr. and Mrs. D'Attilo's Personal Estate Planning Fees) the Probate Court Approved All Legal and Fiduciary Fees and Expenses.

Complainants assert that Day Pitney's fees were in excess of the firm's fee schedule and that Mr. Gallant "took trust funds from Daniel to pay for non-trust fund legal work." These claims are without merit.

As an initial matter, the Day Pitney fees were all entirely consistent with the representation letters:

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[16] The misleading nature of the D'Attilos' claims is reflected in their allegation that Mr. Gallant "offered to resign if he received his full payment of his annual Trustee "commission" of approximately $64,000 a year, for work that he would not do." Grievance Complaint at 3; D'Attilo Statement, ¶ 248, citing E:138-39. The document identified in support of this allegation is an email exchange between two of the D'Attilos' then (and now former) attorneys. But neither the actual text of the emails on which the D'Attilos rely, nor the relevant chronology, supports their allegation. In an email dated March 25, 2013, 10:01 p.m., one of the D'Attilos' attorneys (Attorney Anne Crane of Berkowitz, Trager & Trager) comments to another of their attorneys (Attorney Michael Jones of Ivey, Barnum & O'Mara), *Mr. D'Attilo's* report of Mr. Jones' uninformed speculation of what Mr. Gallant "may want" in order to resign. In fact, Mr. Gallant had not communicated at all with Mr. Jones when Mr. D'Attilo repeated this speculation to Ms. Crane. Mr. Jones first contacted Mr. Gallant by letter emailed at 5:32 p.m. on Thursday March 21, 2013. D'Attilo Statement, Exhibit G:135-37. On Friday, March 22, 2013, Mr. Gallant replied to the Ivey Barnum assistant who had sent him Mr. Jones' letter, stating he would reply to Mr. Jones the following week, which he did on March 29th. D'Attilo Statement, Exhibit G:140. In his March 26, 2013, 11:56 a.m. email to Ms. Crane, writing a day after Mr. Crane's email reporting Mr. D'Attilo's speculation Mr. Jones concludes, "I hope we hear from Brad soon," D'Attilo Statement, Exhibit G:138, confirming that he had not yet heard back from Mr. Gallant in reply to his letter of March 21st. That Mr. Jones already had speculated in his discussion with Mr. D'Attilo about what Mr. Gallant "may want" is not evidence of anything Mr. Gallant did want or ever considered. And, despite claiming to have reviewed "5250 pages of paper" of the Day Pitney files, *see* D'Attilo Statement, ¶ 171, the D'Attilos do not point to any document that supports the wild extrapolation they seek to derive from Mr. Jones' unfounded speculation, or that otherwise supports the claim that Mr. Gallant made such a request. In fact, Mr. Gallant never requested or received fiduciary fees other than those attributable to the period he served as Trustee, all of which were approved by the Probate Court without objection from the D'Attilos or their counsel.

[17] The D'Attilos later fell out with Mr. Freccia and demanded his resignation as well. *See* Exhibit 10.

1. Pursuant to the February 10, 2012 guardianship and trust preparation engagement letter, which was signed by Mr. Gallant and Mr. and Mrs. D'Attilo, the firm charged its standard hourly rates. Day Pitney was paid a total of $55,674.14; of this amount $33,674.14 came from the settlement funds escrowed for "future costs, including probate-related issues", and $22,202 from Daniel's Trust. The Probate Court approved both of these payments.

2. Pursuant to the April 2, 2012 letter, setting forth the terms for Mr. Gallant's service as Trustee, which Mr. and Mrs. D'Attilo and the Probate Court approved, the firm was paid a fiduciary fee of .5% of the annual value of the Trust's assets. The fiduciary fee (plus disbursements) totaled $88,644.54 for the period of his service, beginning in April, 2012 and ending in August, 2013. Also pursuant to that letter, the firm was paid at its standard hourly rates for legal services, including the multiple real estate matters provided to the Trust, which legal fee plus disbursements totaled $16,004.29. The Probate Court approved all of these payments.

3. Finally, pursuant to the May 4, 2012 estate planning engagement letter, which also was signed by Mr. Gallant and Mr. and Mrs. D'Attilo, the firm charged its standard hourly rates. Day Pitney was paid $9,849. After receiving their invoice, the D'Attilos asked if it could be paid from Daniel's Trust. Mr. Gallant told them that it would be inappropriate to pay the entire amount from the Trust, but that he would seek Probate Court approval to have that portion of the fee that was reasonably attributable to Daniel (i.e., the arrangements for his guardians in the event his parents predeceased him, and the charitable trust arrangements for his assets after all of their deaths) paid from the Trust. In the end the D'Attilos paid $5,049 for their personal estate planning and the Trust paid $4,500 for Daniel's share. The Probate Court approved the Trust's payment.[18]

All of the legal and fiduciary fees paid in respect of Daniel's guardianship and Trust were submitted to and approved by the Probate Court at hearings which Mr. and Mrs. D'Attilo either were personally present and/or were represented by independent counsel. At no time did the D'Attilos or their counsel object to any of the Day Pitney fees. Indeed, they went so far as to join in seeking the Court's approval. In the Petition to Amend the Terms of the Daniel Jacob D'Attilo Trust dated July 25, 2013 signed and filed by the D'Attilos they requested:

> "2. For this Court to approve the resignation of KEITH BRADOC GALLANT as the Initial Trustee, *accept his Accounting covering the period from April 24, 2012 through May 31, 2013, as filed* and approve the appointment of VINCENT J. FRECCIA III as the Independent Trustee of the Trust;"

(emphasis added).

[18] Copies of the Day Pitney invoices are attached as Exhibit 11.

Since all of the Day Pitney legal and fiduciary fees were in accord with the three engagement letters, and the Probate Court approved all of the payments from the guardianship and Trust, after hearings and without objections or appeals being taken, there is no probable cause of any violation of the Rule governing fees.

III. Conclusion.

On December 9, 2014, nearly three (3) years after the $25,000,000 settlement of the medical malpractice action, and more than ten (10) years after the D'Attilos signed their contingency fee agreement with KK&B, the D'Attilos sued KK&B, five (5) individual KK&B attorneys, Day Pitney, Mr. Gallant, and Ms. Iannantuoni. Notwithstanding the fact that the 28% contingency fee was set forth in the Settlement Statement and the Application to Compromise, both signed by the D'Attilos and submitted to and approved by the Probate Court, virtually all of the claims in their civil complaint turn on the D'Attilos' allegation that KK&B was not entitled to such a fee. The D'Attilos have now initiated these proceedings against the five (5) individual KK&B attorneys, Mr. Gallant, and Ms. Iannantuoni. The central claim of their Grievance Complaints is identical to that in the civil action: KK&B was not entitled to the 28% contingency fee.

In their Grievance Complaints, Mr. and Mrs. D'Attilo cite, without explanation or analysis, seventeen (17) different Rules of Professional Conduct that they assert the seven lawyers "may have" violated, making no attempt to identify which of the seven are alleged to have violated which Rule(s). D'Attilo Statement, ¶ 360. On behalf of Mr. Gallant and Ms. Iannantuoni, I have focused on the allegations that appear to relate to their own conduct, their lack of involvement in the fee dispute that is the gravamen of the Grievance Complaints (and the civil action), and the issues that this Panel likely wishes to consider concerning Mr. Gallant and Ms. Iannantuoni. In the end, there is simply no evidence of any violation of any Rule by Mr. Gallant or Ms. Iannantuoni.

The amount of the contingency fee that the D'Attilos claim they should have paid KK&B is not a question that involves Mr. Gallant or Ms. Iannantuoni, nor is it an issue that may be decided in these proceedings. It is absolutely clear that Mr. Gallant and Ms. Iannantuoni had no knowledge of any dispute respecting KK&B's fee, or that they attempted to "cover it up" or "protect" it.

Significantly, the D'Attilos fail even to identify a motive for Mr. Gallant and Ms. Iannantuoni to have engaged in such a conspiracy. If, as Complainants allege, Mr. Gallant and Ms. Iannantuoni were colluding with KK&B to procure millions of dollars for KK&B, they (and their firm) obtained nothing for it as it reduced the amount passing into the special needs trust.

The simple facts are these: the D'Attilos lived in Norwalk; their house was in foreclosure and they were contemplating moving. Prior to any involvement of Mr. Gallant or Ms. Iannantuoni, the D'Attilos signed and KK&B filed a Settlement Statement and an Application to Compromise (both showing the 28% contingency fee) in the

Norwalk Probate Court. Mr. Gallant properly advised the D'Attilos that if the Norwalk Probate Court had jurisdiction over Daniel's Trust they probably would not have the kind of discretionary access to Trust funds they indicated they desired. It did not matter to Mr. Gallant which Probate Court had jurisdiction, but he was concerned that it would matter to the D'Attilos. He told them that if they wished to have a highly discretionary budget, they would have a greater likelihood of obtaining that in a different Court. Any move would have to take place promptly as the settlement could not be approved nor the proceeds be disbursed until the Probate Court with jurisdiction acted upon their Application to Compromise. KK&B withdrew the original Application and the D'Attilos moved to Bethel. The appropriate pleadings were filed in the Northern Fairfield County Probate Court and that Court took jurisdiction. Judge Egan reviewed the filings and approved the Application to Compromise and the distributions identified in the Settlement Statement, including the 25% distribution to the D'Attilos and the 28% contingency fee to KK&B, to all of which the D'Attilos had previously and repeatedly indicated their agreement, and to all of which they reaffirmed their agreement when Judge Egan canvassed them at the hearing.

Mr. Gallant and Ms. Iannantuoni never undertook to – and did not – review the terms of the settlement, including the contingency fee to which the D'Attilos had agreed prior to their involvement. They had no duty to do so and were not qualified to do so in any event. They documented all fees appropriately and (with the exception of the amount paid by the D'Attilos for their personal estate planning) the Probate Court approved all fees. There is no evidence of a "conflict of interest," or even a potential one, at any time. It was entirely reasonable and appropriate to close the guardianship when all of Daniel's funds had been transferred to his Trust. Moreover, there is no evidence of financial misconduct of any kind by Mr. Gallant or Ms. Iannantuoni, and the estate planning documents and charitable foundation are all appropriate for the purposes requested by the D'Attilos.

On these facts, there is nothing to support a claim that Mr. Gallant or Ms. Iannantuoni violated any of the seventeen (17) Rules of Professional Conduct cited by the Complainants, whose wild speculations do not provide a basis for a finding of probable cause. Accordingly, on behalf of Mr. Gallant and Ms. Iannantuoni, I respectfully request that each of the Grievance Complaints against them be dismissed in its entirety for lack of probable cause.

Respectfully Submitted,

Mark A. Dubois
Attorney for Keith Bradoc Gallant
and Rebecca Iannantuoni

Relevant Experience and Qualifications of Mr. Gallant and Ms. Iannantuoni

Mr. Gallant, a trusts and estates and disabilities planning attorney, is a partner at Day Pitney. Mr. Gallant is a former President of the Connecticut Bar Association (the "CBA"), a former chair of the CBA's Estates and Probate Section and of the CBA's Pro Bono Committee. He is an Academician of the International Academy of Trust and Estate Law and a Fellow of the American College of Trust and Estate Counsel (as well as a former Chair of its Elder Law Committee). He has served in the House of Delegates of the American Bar Association and is a current member of the CBA's Standing Committee on Professional Ethics.

Since 2006, Mr. Gallant has been designated continuously by Worth magazine as one of "the top 100 lawyers" in the United States serving individual clients. In that same year, he was named one of "the top ten" of all Connecticut lawyers by Connecticut Magazine. The Connecticut Probate Courts have recognized his advocacy on behalf of persons with disabilities by naming him "Citizen of the Year" and in 2014, he received the "Award for Achievement in Superb Client Service and Leadership in the Profession" from the Federal Tax Institute of New England.

Mr. Gallant is a frequent speaker on special needs trusts and ethical issues in planning for disability at seminars in Connecticut and throughout the United States. Among the legal organizations at whose programs he has spoken are the National Academy of Elder Law Attorneys, the American College of Trust and Estate Counsel, the American Bar Association, the Connecticut Bar Association, the Connecticut Trial Lawyers Association and the Connecticut Probate Assembly.

Most recently, in November 2014, Mr. Gallant provided ethics training to Connecticut public defenders on issues in representing clients with impaired capacity. He presented a similar program at a CBA seminar in February 2015 and later that month he spoke at another CBA seminar (with the Honorable F. Paul Kurmay, retired Probate Judge and former Probate Court Administrator) on tax and Medicaid planning for clients with diminished capacity. In September 2015, he is scheduled to speak on planning for incapacity at the American College of Trust and Estate Counsel's mid-Atlantic Fellows meeting in Philadelphia.

Notably, Mr. Gallant was lead counsel for the amicus curiae in the 1999 landmark Connecticut Supreme Court case, Department of Social Services v. Saunders. The Saunders decision remains the leading Connecticut case on the creation of special needs trust by Court-appointed fiduciaries.

Mr. Gallant's interest in disabilities planning has led him to volunteer with numerous organizations that provide services to persons with special needs. He serves as vice president of the Board of Directors of the Center for Medicare Advocacy, a national organization serving Medicare patients and he regularly provides pro bono estate planning services to disabled and able veterans through the Connecticut Veterans' Legal Center in West Haven.

Ms. Iannantuoni was the founding Chief Clerk of the Waterbury Regional Children's Probate Court. She received an Official Citation from the Connecticut General Assembly for her efforts in creating and establishing this special jurisdiction Court, which addresses the legal needs of disabled and abused/neglected children.

Her practice, as an attorney at Day Pitney, has a particular focus on all aspects of planning for children and adults with disabilities, including special needs trusts, conservatorships, guardianships and adoptions. She also has extensive experience with public assistance benefits eligibility and Title XIX/Medicaid planning. Ms. Iannantuoni receives probate court appointments as guardian ad litem ("GAL"), attorney for conserved persons and guardian of the person for individuals with intellectual disabilities, many of which appointments are pro bono. (Ms. Iannantuoni first met Mr. Gallant, approximately fifteen (15) years ago, through a matter involving a young man with intellectual disabilities. She was serving as court-appointed guardian of his person and Mr. Gallant represented the corporate fiduciary of a trust created for his benefit by his late mother.)

Ms. Iannantuoni also provides private pro bono legal services to individuals with disabilities through Day Pitney and various community organizations. Like Mr. Gallant, Ms. Iannantuoni works regularly with the Connecticut Veterans Legal Center where she provides advice on public assistance benefits to disabled veterans and their families.

She is a member of the Estates and Probate and Elder Law Sections of the Connecticut Bar Association and of the National Academy of Elder Law Attorneys. She has lectured on special needs planning to numerous organizations and frequently co-authors Mr. Gallant's presentations. Together they co-authored the chapter, "Drafting and Administering the Special Needs Trust" in A Practical Guide to Estate Planning in Connecticut (May 2013).

Ms. Iannantuoni has been a lifelong advocate of individuals with special needs. Her older sister (who has never walked, talked or managed any activity of daily living, independently) was diagnosed as an infant with a severe form of cerebral palsy and microcephaly. Ms. Iannantuoni is directly involved in all aspects of her sister's life. Additionally, she is the mother of four children, two of whom are on the autism spectrum. Her youngest child (who is medically complex and profoundly intellectually disabled) was a ward of the Connecticut Department of Children and Families ("DCF") prior to his adoption. She is deeply involved in advocating for adoption (and fostering) of disabled children and regularly provides public service announcements ("PSA") on behalf of DCF. Her most recent PSA was on May 7 in celebration of Foster Care Awareness Month.

DAY PITNEY LLP

INTRA-OFFICE MEMORANDUM

TO: FILE/D'ATTILO, DOMENIC & CATHY

FROM: Keith Bradoc Gallant

DATE: February 22, 2012

RE: Notes from meeting at Koskoff with Kathleen Nastri, Jim Horwitz, KBG, Domenic & Cathy

1) Desire to leave Norwalk for personal reasons.

2) Need to evaluate structure.

3) Need to finalize trust.

4) Allocation (22% plus part of loan?)

Notes: Danny's life expectancy is to age 35/40. Need, say, $150,000 for Danny in 12 years. Brookfield, Stratford, Stamford, Westport, Bethel, Ridgefield, North Haven, East Haven.

DAY PITNEY LLP

NEW YORK NEW JERSEY CONNECTICUT BOSTON WASHINGTON, DC WWW.DAYPITNEY.COM

November 28, 2012
Invoice: 33724966

THE DANIEL JACOB D'ATTILO IRREVOCABLE TRUST
C/O KEITH BRADOC GALLANT, TRUSTEE
DAY PITNEY
ONE AUDUBON STREET
NEW HAVEN, CT 06518

Tax Identification No. [redacted]

FOR PROFESSIONAL SERVICES RENDERED in connection with the Trust's Application for and Purchase of real property, including contract negotiations for several different parcels of land and purchasing of and settling title to Lot 7 Frank Drive, Shelton, CT; attendance at closing (details attached).

PURCHASE OF REAL ESTATE (710280-000030)

Date	Description	Name	Hours	Amount
06/25/2012	Telephone calls from, to C. and D. D'Attilo; telephone call to Court; notes; prepare Probate contingency language (part n/c - fiduciary)	Gallant, B	1.2	$ 636.00
06/28/2012	E-mails regarding contingencies in contract	Gallant, B	0.5	265.00
07/19/2012	Office conference with B. Gallant regarding house purchase and planning for same	Iannantuoni, R	0.4	152.00
07/23/2012	E-mails; general instructions regarding contract; office conference regarding Trust issues for purchase (part n/c)	Gallant, B	0.8	424.00

Date	Description	Name	Hours	Amount
07/23/2012	Review Real Estate Contract; telephone conference with J. Foito regarding problems with same; Draft contract required to protect interests of trust, et cetera	Iannantuoni, R	1.5	570.00
07/24/2012	Review trust issues for real estate purchase; execute contract	Gallant, B	0.2	106.00
07/24/2012	E-mails regarding contract deposit et cetera	Gallant, B	0.3	159.00
07/24/2012	Review of e-mails regarding contract for lot purchase	Iannantuoni, R	0.3	114.00
07/25/2012	E-mails regarding financing and title search; evening e-mails (n/c)	Gallant, B	0.3	159.00
07/25/2012	Telephone conference with D. D'Attilo and C. D'Attilo regarding house planning	Iannantuoni, R	0.3	114.00
08/14/2012	E-mails regarding architect and lots; office conference with B. Gallant regarding same	Iannantuoni, R	0.2	76.00
08/16/2012	Multiple e-mails regarding next steps with house	Iannantuoni, R	0.5	190.00
08/23/2012	Office conference with B. Gallant regarding contract for lots; Instructions	Iannantuoni, R	0.2	76.00
08/27/2012	E-mails and instructions regarding new property	Iannantuoni, R	0.2	76.00
08/28/2012	E-mails regarding new property location	Iannantuoni, R	0.1	38.00
08/29/2012	E-mails regarding real estate purchase	Iannantuoni, R	0.1	38.00
08/30/2012	Office conference regarding status of real estate; instructions	Iannantuoni, R	0.1	38.00
09/04/2012	Office conference and instructions regarding real estate and architect fees	Gallant, B	0.2	106.00
09/05/2012	E-mails and file administration (real estate)	Gallant, B	0.3	159.00
09/07/2012	E-mails and office conference regarding real estate status	Iannantuoni, R	0.2	76.00

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Date	Description	Name	Hours	Amount
09/13/2012	Part telephone conference regarding real estate and construction	Gallant, B	0.3	159.00
09/14/2012	Numerous e-mails and instructions regarding lease, guaranty et cetera; correspondence	Gallant, B	1.0	530.00
09/14/2012	Multiple telephone conferences with D. D'Attilo regarding rental and new expenses; correspondence to Lessor regarding guaranty; memorandum to file	Iannantuoni, R	1.0	380.00
09/19/2012	Review lease; e-mails; follow up on contract	Gallant, B	0.5	265.00
09/19/2012	Correspondence regarding guaranty; office conference with B. Gallant; instructions	Iannantuoni, R	0.4	152.00
09/20/2012	E-mails regarding lot purchases, contract et cetera	Gallant, B	0.2	106.00
09/27/2012	Office conference with D. and C. D'Attilo and T. Rosenblum regarding real estate; notes; e-mails et cetera; further telephone calls from D. D'Attilo; draft Application for real estate; correspondence regarding real estate; file administration (n/c)	Gallant, B	2.0	1,060.00
09/27/2012	Correspondence regarding purchase; file administration	Gallant, B	0.5	265.00
09/28/2012	Instructions regarding Application to Court; review draft; further instructions; e-mails	Gallant, B	0.7	371.00
09/28/2012	Instructions regarding contract for lot et cetera; e-mails; file administration (all part n/c)	Gallant, B	1.7	901.00
09/28/2012	Office conference with B. Gallant; draft to phase one Application to build house; memorandum to file; e-mails regarding same; instructions (all part n/c)	Iannantuoni, R	1.7	646.00
10/01/2012	Finalize Application to Court; file administration; e-mail to C. and D. D'Attilo; part telephone call with D. D'Attilo	Gallant, B	1.5	795.00

Date	Description	Name	Hours	Amount
10/01/2012	Telephone conference with T. Welch; e-mails regarding Contract; review issues; memorandum to file; review draft contract; part telephone call (regarding real estate and architect contracts)	Gallant, B	1.7	901.00
10/01/2012	Office conference with B. Gallant regarding purchase of new lot; final review of application regarding same; e-mails regarding same	Iannantuoni, R	0.6	228.00
10/02/2012	E-mails regarding contract, check; office conference regarding contract; telephone call to T. Welch; forward contract; further e-mails regarding contract, deposit	Gallant, B	1.7	901.00
10/02/2012	Review and revise real estate contract for Lot 2 Frank Drive; office conference with B. Gallant regarding same; instructions regarding wiring deposit; file administration	Iannantuoni, R	1.8	684.00
10/03/2012	Office conference regarding architect's telephone call concerning ledge "contingency"; review next steps; confirm deposit	Gallant, B	0.3	159.00
10/03/2012	Telephone call with T. Rosenblum regarding ledge issues at Frank Drive property; office conference with B. Gallant; e-mails regarding same	Iannantuoni, R	0.5	190.00
10/08/2012	E-mails regarding contract contingency	Gallant, B	0.1	53.00
10/08/2012	Office conference with B. Gallant regarding soil testing issues	Iannantuoni, R	0.1	38.00
10/15/2012	E-mails to T. Welch regarding closing	Gallant, B	0.1	53.00
10/23/2012	E-mails and instructions regarding closing	Gallant, B	0.3	159.00
10/25/2012	Instructions regarding closing; file administration regarding closing	Gallant, B	0.4	212.00
10/25/2012	Office conference with B. Gallant regarding approval to purchase land; e-mail to T. Welch regarding settlement of title and related closing issues; e-mails regarding title search	Iannantuoni, R	0.5	190.00

Day Pitney LLP

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Date	Description	Name	Hours	Amount
10/25/2012	Telephone conversation with L. Cowley regarding title search for Lot 2, Frank Drive, Shelton	Poole, S	0.2	35.00
10/26/2012	Follow up and part e-mails regarding closing and funds transfer	Gallant, B	0.2	106.00
10/29/2012	Multiple e-mails regarding closing	Gallant, B	0.3	159.00
10/30/2012	E-mails regarding closing; instructions	Gallant, B	0.2	106.00
10/30/2012	E-mails regarding closing and rescheduling same	Iannantuoni, R	0.2	76.00
11/02/2012	Instructions regarding closing	Gallant, B	0.1	53.00
11/02/2012	Review of title search; e-mails to T. Welch regarding status of same	Iannantuoni, R	0.3	114.00
11/05/2012	E-mails and instructions regarding closing	Gallant, B	0.3	159.00
11/05/2012	E-mails and telephone conferences with P. Tylinsky, B. Gallant and C. D'Attilo regarding closing and title search; e-mail T. White regarding funding	Iannantuoni, R	0.5	190.00
11/06/2012	E-mails and telephone conferences regarding closing figures and documents for purchase of lot	Iannantuoni, R	1.2	456.00
11/07/2012	Office conferences regarding closing issues and wire transfers	Gallant, B	0.3	159.00
11/07/2012	Review chain of title issues; telephone conferences with FATIC and T. Welch; travel to and attend closing; multiple e-mails regarding wiring issues; instructions	Iannantuoni, R	3.5	1,330.00
11/08/2012	Confirm title and other issues (n/c)	Gallant, B	0.1	0.00
11/08/2012	Telephone conferences and e-mails regarding receipt of funds and recording	Iannantuoni, R	0.5	190.00
		Matter Fee		$ 16,103.00

Matter Disbursement Summary

Recording Fees	$ 58.00	
	$ 58.00	
Matter Disbursements		$ 58.00

Total For Professional Services Rendered	16,103.00
Less Courtesy Discount	-1,500.00
Billed Fees	14,603.00
Total Disbursements	58.00
Total Bill	$ 14,661.00

DAY PITNEY LLP

NEW YORK NEW JERSEY CONNECTICUT BOSTON WASHINGTON, DC WWW.DAYPITNEY.COM

May 22, 2012
Invoice: 33702956

MR. AND MRS. DOMENIC D'ATTILO
3 SARA'S WAY
BETHEL, CT 06801

Tax Identification No. [redacted]

FOR PROFESSIONAL SERVICES RENDERED in the below captioned matter(s) for the period through May 21, 2012, including:

DANIEL J. D'ATTILO GUARDIANSHIP PROCEEDING AND TRUST PREPARATION (709718-000000)

Date	Description	Name	Hours	Amount
02/01/2012	Intake conference at Koskoff, Koskoff & Bieder, PC; notes	Gallant, B	4.5	$ 2,385.00
02/09/2012	Office conference with D. and C. D'Attilo; notes; review structure, budget, trust et cetera (general conversation n/c); review issues for hearing; telephone conference with K. Nastri and R. Iannantuoni regarding probate issues; e-mails; preliminary review of Life Care Plan	Gallant, B	4.5	2,385.00
02/09/2012	Office conference with B. Gallant; telephone conference with B. Gallant and K. Nastri regarding planning issues and next steps	Iannantuoni, R	0.8	304.00
02/10/2012	Begin drafting of trust; review annuity projections; return telephone call from C. and D. D'Attilo; notes	Gallant, B	1.8	954.00

Date	Description	Name	Hours	Amount
02/12/2012	Continue draft of Trust; draft e-mail regarding financial advisors et cetera; review Probate pleadings filed to date; prepare e-mail analyzing structure issues and presenting recommendation	Gallant, B	3.5	1,855.00
02/13/2012	Review disclaimer statutes and confirm trust provision; continue preparation of trust and finalize e-mails regarding structure et cetera (part n/c)	Gallant, B	2.3	1,219.00
02/15/2012	Review Compliant; review other documents; notes for budget/annuity discussion	Gallant, B	0.5	265.00
02/16/2012	E-mails to, from Koskoff, Koskoff & Bieder; lengthy office conference with C and D. D'Attilo; notes (general conversation n/c); e-mails regarding annuity et cetera; calculations; e-mails from, to J. Bair	Gallant, B	4.5	2,385.00
02/16/2012	Office conference with B. Gallant, C. and D. D'Attilo regarding jurisdiction, schooling, budget et cetera	Iannantuoni, R	1.0	380.00
02/17/2012	Part telephone conference with K. Nastri; review "illustrations" per C. D'Attilo's request; notes	Gallant, B	0.5	265.00
02/20/2012	Continue review of structure and jurisdictional issues (over two days; all part n/c); e-mails; telephone call from J. Foito; e-mails; telephone call from C. D'Attilo; further e-mails; research transfer of guardianship; memorandum to file; further e-mails (all part n/c)	Gallant, B	3.0	1,590.00
02/21/2012	E-mails; telephone call from C. D'Attilo; notes; prepare materials for meeting	Gallant, B	0.8	424.00
02/22/2012	Attend at Koskoff, Koskoff & Bieder; office conference with K. Nastri and J. Horwitz and, later, C. and D. D'Attilo (general conversation n/c); return; continue review of financial issues; notes	Gallant, B	4.0	2,120.00

Law Offices of Howard Altschuler

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Bethany, CT 06524
Voice: (234) 567-9897
Fax: (815) 846-1664
Website: www.legal-malpractice.com
Email: legalmalpractice@gmail.com

ADMITTED:

STATE COURTS:
CT, NJ, NY, PA

FEDERAL APPELLATE COURTS:
UNITED STATES SUPREME COURT
2ND CIR. CT. OF APPEALS
3RD CIR. CT. OF APPEALS
9TH CIR. CT. OF APPEALS

FEDERAL TRIAL COURTS:
SOUTHERN DISTRICT OF NEW YORK
EASTERN DISTRICT OF NEW YORK
DISTRICT OF CONNECTICUT
DISTRICT OF NEW JERSEY

FEDERAL BANKRUPTCY COURTS:
DISTRICT OF CONNECTICUT
SOUTHERN DISTRICT OF NEW YORK

New York Office:
281 Garth Rd.
Building C- 3D
Scarsdale, NY 10583
Please Reply to Bethany Office

June 12, 2015

Eugene J. Riccio, Esq., *Grievance Counsel*
Stamford/Norwalk Judicial District Grievance Panel
P.O. Box 9118 Bridgeport, CT 06601
VIA E-MAIL: ejr@gulashandriccio.com, FACSIMILE 203-336-8379, and FIRST CLASS MAIL
cc: Mark Dubois, Esq., and Michael Bowler, Esq. via email

RE: Grievance Complaints #15-0142, 15-1043

Dear Attorney Riccio,

Yesterday I received a copy of the response in the above grievance complaints. This is to notify the Panel that the Day Pitney responses contain multiple *significant* misrepresentations of fact. As you undoubtedly know, this is a high profile case. Attorneys and clients throughout the state will be aware of its outcome and be guided accordingly. Given the gravity of these grievances, I surprised at, and object to, your decision that a reply on behalf of my clients will not be considered. I hereby request permission to file a formal reply and a reasonable amount of time to do so.

Reaching a decision based upon the actual facts is particularly important in this case. There were two previous grievance Panels who declined to hear the grievance against the Day Pitney respondents because of conflicts of interest. One respondent is the former president of the Connecticut Bar Association and is now being represented by the current president of the CBA. Mr. Dubois is also the former chief disciplinary counsel for the Statewide Grievance Committee (and his firm employs his successor to that post). While the respondents are undoubtedly well-connected, this grievance is not about their connections but the documented facts.

This raises another issue: the grievance website lists two attorneys and one attorney alternate for the Stamford/Norwalk Panel. Please let me know whether a non-attorney has been appointed who will participate in the Panel's determination. If not, I object to the Panel reaching a decision without a non-attorney. Having a non-attorney participate is especially important in this case when it has been so difficult to find a Panel that did not have a conflict of interest.

Another reason why it is important for the Panel to permit a reply is that the respondents' failure to take responsibility for their actions and their misrepresentations in their reply should be considered as part of the grievance. *See, e.g.*, *Statewide Grievance Comm. v. Ankerman*, No. CV000802379, 2001 WL 34039473, at *4 *aff'd*, 74 Conn. App. 464 (2003). However, the Panel will never know about these misrepresentations if a reply is not permitted. Permitting the respondents to reply without challenge creates the distinct possibility that the Panel will reach its decision based on erroneous information. Since I am confident that is not what the Panel would want, permitting a reply is merited.

While the full scope of the misrepresentations would have to be detailed in a formal reply, for example only, the respondents write: "Mr. Gallant and Ms. Iannantuoni never undertook to – and did not – review the terms of the settlement, **including the contingency fee** to which the D'Attilo's had agreed prior to their involvement. They had no duty to do so and were not qualified to do so in any event." Pg. 8. *All emphasis in quotations is added.*

Putting aside the false statement that they had no duty to review these documents, or the disingenuous claim that the respondents were unqualified to review a retainer or settlement agreement (if true, that should have been disclosed to the D'Attilos), there is documentary evidence that the respondents not only read the March 21, 2003 Retainer Agreement but that the respondents significantly relied on the 2003 Retainer Agreement in crafting the settlement statement that the respondents submitted to the Northern Fairfield Probate Court.

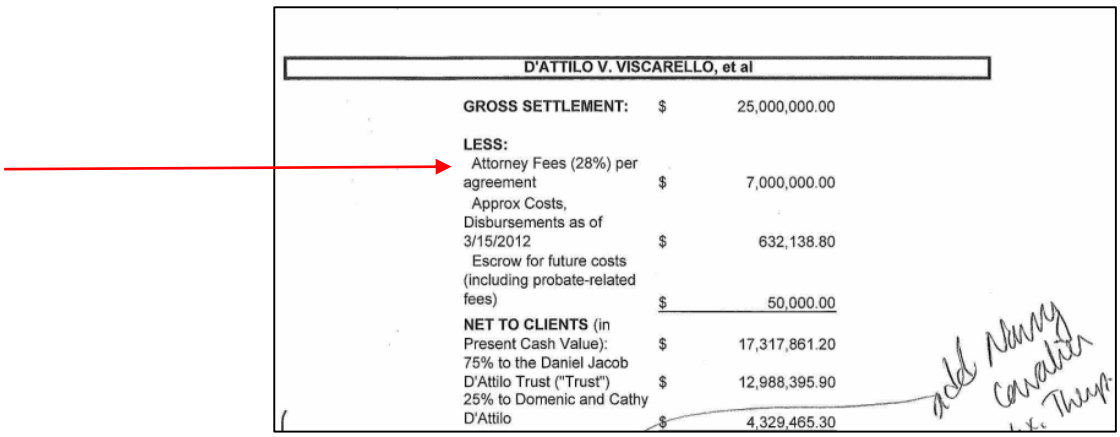
Specifically, as noted in the grievance complaint, on February 15, 2012, Brad Gallant received a copy of the three documents sent to Collen Fries—(1) the medical malpractice complaint, (2) the March 21, 2003 retainer agreement, and (3) a one page summary of lawsuit costs. Respondents include as their *Exhibit 11. A.* a copy of billing statements. The Day Pitney invoice entry for February 15, 2012 indicates that Mr. Gallant reviewed the medical malpractice complaint and "other **documents**." As noted, the only other documents sent that morning to Brad Gallant were the March 21, 2003 retainer agreement and the lawsuit costs summary:

02/15/2012	Review Compliant; review other documents; notes for budget/annuity discussion	Gallant, B	0.5	265.00

Since the standard of proof at this stage is probable cause, this entry by itself is probable cause that Brad Gallant reviewed the March 2003 Retainer Agreement on February 15, 2012 in direct contradiction to his claim to this Panel. However, there is much more. Respondents do not address the evidence previously submitted to this Panel that, in fact, the respondents carefully reviewed the March 21, 2003 Retainer Agreement and knew its contents.

Pages G:62 to G:69 of the grievance exhibits previously submitted to the Panel are copies of paper documents turned over to the undersigned by Day Pitney. These documents came directly from the folder on page G:61 and they are presented in the order in which they were found in the paper file itself. These documents include handwritten notes and calculations related to the settlement statement. **Critically, in the middle of all of these calculations and handwritten notes, on page G:66-G:67, the paper folder file includes the March 21, 2003 Retainer Agreement**, with a Post-It in the upper right-hand corner, also in the handwriting of someone at Day Pitney. G:66. The one page summary of lawsuit costs is found at page G:68.

The first page of this group of documents (G:62) includes a draft summary of settlement costs, which in part says: "Attorney Fees (28%) **per agreement**". *(See also* page G:64. Page G:70 was not a part of the paper file but is a printout of the actual Excel spreadsheet file, dated March 18, 2012):



D'ATTILO V. VISCARELLO, et al

GROSS SETTLEMENT:	$	25,000,000.00
LESS:		
Attorney Fees (28%) per agreement	$	7,000,000.00
Approx Costs, Disbursements as of 3/15/2012	$	632,138.80
Escrow for future costs (including probate-related fees)	$	50,000.00
NET TO CLIENTS (in Present Cash Value):	$	17,317,861.20
75% to the Daniel Jacob D'Attilo Trust ("Trust")	$	12,988,395.90
25% to Domenic and Cathy D'Attilo	$	4,329,465.30

The handwritten notes indicate that these documents were carefully reviewed by the respondents. Page G:71 is a March 7, 2012 email between Iannantuoni and Gallant indicating that the two were working on the settlement statement together. The grievance complaint include substantial evidence that the respondents were working closely with KKB on the settlement statement as well. On April 2, 2012, after working nearly a month on the settlement statement, the respondents submitted a draft settlement statement to Judge Egan (G:72) which states in part as follows:

D'ATTILO V. VISCARELLO

Settlement		$25,000,000.00
Attorney's Fees (28%)	$7,000,000.00	
Lawsuit Costs as of 3/28/12	+632,138.87	
		-7,632,138.87
Net to Clients in Present Value		$17,367,861.13
Escrow for future costs, including probate-related issues (estimated)		-50,000.00
Net To Clients		$17,317,861.13

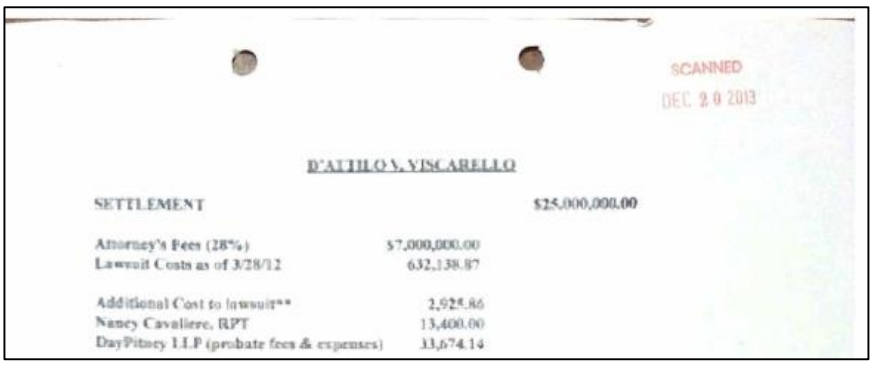
****

The respondents corrected a 7¢ error, changing $632,138.**80** to $632,138.**87**. The respondents also intentionally deleted "**per agreement**". As the Panel can see from the paper file, when respondents reviewed the settlement statement, they did it with the Retainer Agreement close at hand, and they knew exactly what the Retainer Agreement stated. On April 25, 2012, Gallant submitted a "corrected" statement (G:93). Again, the "**per agreement**" is missing.

D'ATTILO V. VISCARELLO

Settlement		$25,000,000.00
Attorney's Fees (28%)	$7,000,000.00	
Lawsuit Costs as of 3/28/12	+632,138.87	
		-7,632,138.87
Net to Clients in Present Value		$17,367,861.13

The final version submitted to the Probate Court in May 2012 likewise omits that it was "per agreement": (G:119):

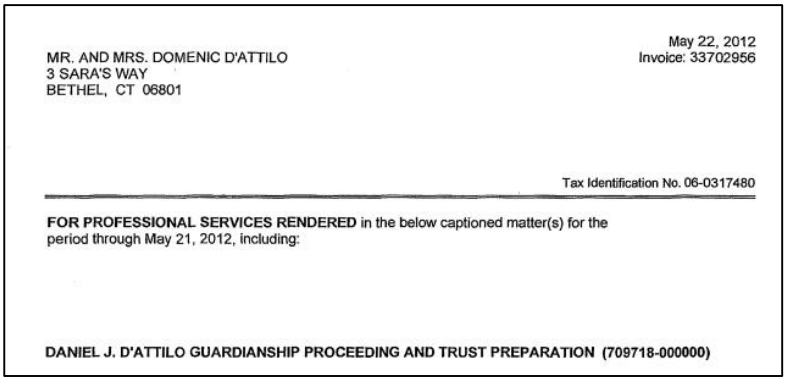


SCANNED
DEC 2 0 2013

D'ATTILO V. VISCARELLO

SETTLEMENT	$25,000,000.00
Attorney's Fees (28%)	$7,000,000.00
Lawsuit Costs as of 3/28/12	632,138.87
Additional Cost to lawsuit**	2,925.86
Nancy Cavaliere, RPT	13,400.00
DayPitney LLP (probate fees & expenses)	33,674.14

As noted in the complaint, Mr. Gallant misled Judge Egan when he wrote that the settlement statement had been prepared by Koskoff, Koskoff & Bieder. (G:74). Moreover, the Application to Compromise prepared by the respondents in conjunction with KKB (G:74-G:75) specifically refers to the "Proposed Settlement". It is disingenuous for respondents to claim they had no obligation to actually read the settlement agreement on which these calculations and Application to Comprise that *they* submitted were based. The respondents are also claiming complete ignorance of the Retainer Agreement and claim they had no duty to read it. In reality, the Day Pitney billing statements, among other things that I would point out in a reply, establish the duty:



MR. AND MRS. DOMENIC D'ATTILO
3 SARA'S WAY
BETHEL, CT 06801

May 22, 2012
Invoice: 33702956

Tax Identification No. 06-0317480

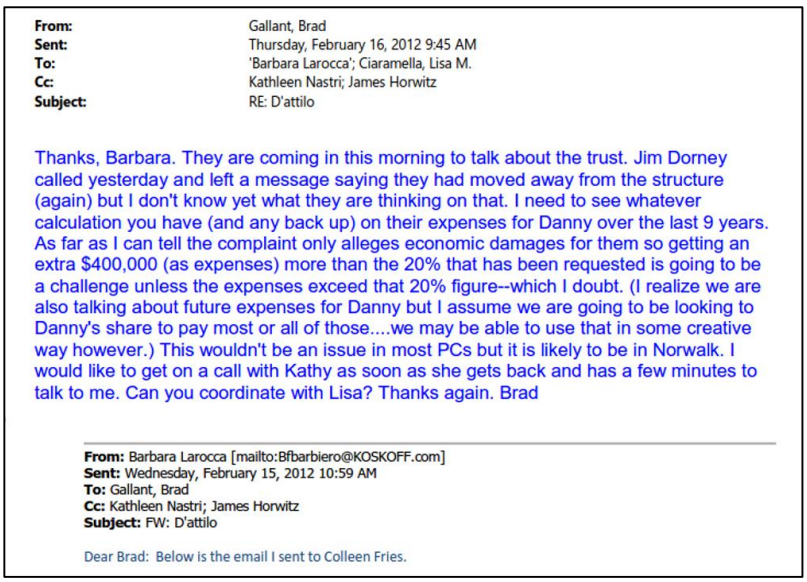
FOR PROFESSIONAL SERVICES RENDERED in the below captioned matter(s) for the period through May 21, 2012, including:

DANIEL J. D'ATTILO GUARDIANSHIP PROCEEDING AND TRUST PREPARATION (709718-000000)

The respondent were retained to represent **Cathy and Domenic** in the trust preparation **and in the guardianship proceedings**. See also Day Pitney retainer agreement. G:27. Mr. Gallant and Ms. Iannantuoni were on notice that the Retainer Agreement was relevant to the guardianship proceedings by the email Gallant received related to the requests of Colleen Fries. There is no special expertise needed to review this 1¼ page Retainer Agreement. And if expertise was needed, presumably all of the respondents' 100+ trust clients signed retainer agreements. Respondents surely had a responsibility to the D'Attilos as clients and later Mr. Gallant as Danny's Trustee, to make sure that the fees, as well as the expenses, were accurately calculated. There is more that can be said about this, which is part of the reason I am requesting permission to reply.

Of course, the issue here is not whether there is clear and convincing evidence necessary for the grievance hearing, but whether there is probable cause to merit such a hearing. The invoice entry, the documents in the folder, and the modification of the settlement statement to delete "per agreement" should establish a probable cause that the respondents are lying to this panel when they claim that they never reviewed the Retainer Agreement, notwithstanding their absurd claim they had no obligation to do so.

In a related misrepresentation, on page 8, the respondents write: "neither Mr. Gallant nor Ms. Iannantuoni has ever litigated a medical malpractice action **and they have never undertaken to evaluate the merits, legal strategies or results of such an action**." That is also a material misrepresentation. In fact, Mr. Gallant based his legal advice regarding allocation entirely on his review of the medical malpractice complaint (if his claim that he never looked at the medical malpractice settlement agreement mentioned in the Application to Compromise can be believed):



From: Gallant, Brad
Sent: Thursday, February 16, 2012 9:45 AM
To: 'Barbara Larocca'; Ciaramella, Lisa M.
Cc: Kathleen Nastri; James Horwitz
Subject: RE: D'attilo

Thanks, Barbara. They are coming in this morning to talk about the trust. Jim Dorney called yesterday and left a message saying they had moved away from the structure (again) but I don't know yet what they are thinking on that. I need to see whatever calculation you have (and any back up) on their expenses for Danny over the last 9 years. As far as I can tell the complaint only alleges economic damages for them so getting an extra $400,000 (as expenses) more than the 20% that has been requested is going to be a challenge unless the expenses exceed that 20% figure--which I doubt. (I realize we are also talking about future expenses for Danny but I assume we are going to be looking to Danny's share to pay most or all of those....we may be able to use that in some creative way however.) This wouldn't be an issue in most PCs but it is likely to be in Norwalk. I would like to get on a call with Kathy as soon as she gets back and has a few minutes to talk to me. Can you coordinate with Lisa? Thanks again. Brad

From: Barbara Larocca [mailto:Bfbarbiero@KOSKOFF.com]
Sent: Wednesday, February 15, 2012 10:59 AM
To: Gallant, Brad
Cc: Kathleen Nastri; James Horwitz
Subject: FW: D'attilo

Dear Brad: Below is the email I sent to Colleen Fries.

Day Pitney charged extraordinary legal fees for this and other advice. The respondents should not now be permitted to claim ignorance or lack of responsibility. While this raises other issues that will not be addressed here because I am seeking permission to reply, this is yet another example that the respondents' reply contains material misrepresentations of fact, and such misrepresentations should be considered when determining probable cause.

Similarly, respondents misrepresent what they present as a crucial fact: they claim that Norwalk Probate Court and Colleen Fries were a problem because the respondents were creating a special needs trust. Respondents don't provide a shred of evidence to back up anything they say about the Norwalk Probate Court or Collen Fries to this Panel. Moreover, the trust was ***not*** a special needs trust (it was a discretionary support trust that could be converted to a special needs trust). Article I of the trust stated that during Danny's minority that it be used at the discretion of the Trustee in Danny's best interest, not for his special needs. A special needs trust generally provides that the funds be used only to supplement government benefits to which the beneficiary may be entitled. If the parents decided to do that, i.e., obtain government benefits for Danny, it could have been done by terminating the trust and creating a special needs trust any time before Danny turns 65. The creation of a "switch" to a special needs trust in Article V of this trust was not efficient or necessary and it certainly did not create a basis for the oversight the respondents claimed would be imposed by Norwalk Probate Court and Colleen Fries.

There was never any prospect that this was going to be a special needs trust (which is why the state did not bother appearing at the probate hearing and Assistant Attorney General Gary Williams wrote to the Probate Court on May 1, 2012 that the State "does not need to be notified of upcoming probate proceedings").

Significantly, despite claiming that they advised the D'Attilo's to move their entire family in two weeks to avoid Norwalk and Colleen Fries so the D'Attilos could get a better allocation and more independence, that actually did not occur in Northern Fairfield. The respondents made no effort to get what they claimed the D'Attilos moved for. For example, the D'Attilos were given minimal discretion and had to account to the respondents for everything, such as whether Danny could spend part of his $12 million on a puppy or get over-the-counter allergy medicine at Walmart. *See* Grievance Complaint ¶271, 322.

The respondents also made no effort to obtain a fair allocation of the settlement funds, claiming disingenuously that they never bothered to read the actual settlement agreement. As it turns out, the actual settlement agreement applied to all three D'Attilos equally and had no allocation. However, by only seeking 25% for Day Pitney's clients (Cathy and Domenic), Gallant ended up being the trustee at .5% of a trust that had millions of dollars more in it than necessary for Danny's needs. In fact, there was zero necessity for Brad Gallant or any attorney to be a trustee.

The salary arranged for by the respondents was not an accomplishment, but a part of their scheme. The money came out of funds held in trust on which the respondents were receiving a percentage. If the money had gone directly from the settlement to Cathy and Domenic as part of their allocation, Day Pitney would not have received a penny. While the arrangement was to the advantage of Day Pitney, the D'Attilos have paid hundreds of thousands of dollars in taxes for the salary. In addition, they are potentially subject to millions of dollars in estate taxes, an issue which is also presently being worked on to avoid, if possible, such an outcome. They have also incurred and continue to incur legal fees for probate and estate matters to mitigate damages caused by the respondents and KKB. The erroneous legal advice regarding the allocation was not only wrong it was a conflict of interest because the respondents knew at the time that it would only hurt the D'Attilos and only help the respondents.

Absolutely nothing changed for the D'Attilos because they were in Northern Fairfield rather than Norwalk. The only thing that changed is that the respondents succeeded in getting Colleen Fries off the case and the Retainer Agreement off the Probate Court's radar screen. Although respondents expressed great admiration for Colleen Fries' opinions in their response, they ignored the fact that she believed reviewing the Retainer Agreement was an integral part of her work. While the respondents provided a copy of the medical malpractice complaint to Northern Fairfield County, they intentionally did not provide a copy of the Retainer Agreement, though Ms. Fries put them on notice of its importance.

There are also many issues not addressed by the respondents which the D'Attilos should be given an opportunity to point out so they are not lost in the complexity of this case. For example on the issue of motive, respondents completely ignore the fact that Gallant's son was hired as a summer associate at KKB in May 2014. G:151. KKB is (or at least was) one of the most highly regarded law firms in the state of Connecticut and that certainly evidences probable cause that there was a *quid pro quo* reward for Mr. Gallant's participation.

Instead of taking responsibility, respondents are seeking to retroactively award legal degrees to Cathy (high school diploma), Domenic (11th grade), and Danny (permanently disabled). Apparently the respondents' believe it was the D'Attilos' responsibility to figure out the legal ramifications of the respondents' intentionally bad advice. Nothing the firm did benefited the D'Attilos. To the contrary, the respondents' placed their interests for legal fees far above the interests of the D'Attilos and as detailed in the complaint assisted KKB in its scheme to defraud.

Mr. Dubois recently wrote an article for the Connecticut Law Tribune (June 1, 2015) which states in part:

> Another day, another lawyer theft. That used to be my motto when I began as Connecticut's chief disciplinary counsel. At the time, the economy was strong and lawyers' IOLTA accounts were flush. Some lawyers were routinely dipping into clients' funds; millions of dollars went missing. Though the shrinkage was small compared with the amount at risk, it was large in absolute numbers.
>
> ***
>
> **Lawyer stealing is a crime of opportunity**. If you have lots of dough sitting in an essentially unregulated account, the temptation to dip into it to meet payroll or a mortgage payment can be irresistible. Many started this way, taking a bit, returning it later on, then taking a bit more for a bit longer until they were under water and had no hope of repaying it.
>
> ****
>
> Probate accounts used to drive me and Statewide Bar Counsel Mike Bowler crazy. The rules do not require lawyers to register "single client" fiduciary accounts. Thus, these accounts cannot be randomly audited. Heck, no one on the regulatory side even knows where they are and what is (or is not) in them. **Many probate fiduciary accounts extend not for weeks or months (as with personal injury recoveries, closings and deals) but for decades**. Many of the fiduciaries don't have bonds, as that requirement can be waived in the wills or trust documents which set the lawyers up as caretakers.
>
> Some probate judges seem not to watch these accounts too closely, relying on the lawyers to file honest accountings after the fact. The probate courts' supervision of testamentary (and conservatorship and other court-supervised accounts) varies among the courts and at times can be

> idiosyncratic so that anyone conducting an audit of them would need to understand what the lawyer is being asked to do.

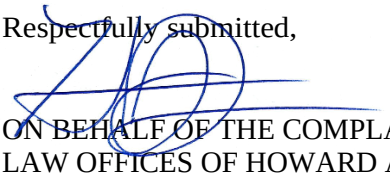
Respondents provided no proof they alerted the Probate Court to any of these issues, which, instead, relied on respondents "to file honest accountings after the fact." As noted, the fees charged by Day Pitney were outrageously high for a special needs trust that was never created and was never needed. On page 8, respondents state that they have been retained for approximately 100 guardianship matters "typically involving substantial settlements or judgments and the creation of special needs trust for disabled minors or adults." During the 18 months or so Day Pitney was involved in the case they charged the D'Attilos or the trust on average almost $9,000 a month. 9000×100 = **$900,000 per month rate**, depending on how many are still in existence. If the D'Attilos had passed away while Gallant's Foundation was in effect, Day Pitney or Brad Gallant would have been the executors of a charitable organization with millions of dollars and no oversight as to legal fees.

It has only been through the mitigation of damages that the D'Attilos recently were able to correct at least part of the damage done by these respondent-attorneys who took advantage of them. The D'Attilos are now sole trustees, and only have to provide accountings to the Probate Court. They do not have to pay outrageous legal fees such as $160,000 to Day Pitney, or get permission to buy a puppy for Danny. The D'Attilos will now at long last be able to proceed with the building of a specially designed house for Danny, again without having to pay high-priced attorneys to oversee the building process, and they will no longer have to rent. However, if the respondents' scheme had succeeded, Danny's trust would have paid the respondents' firm in excess of $60,000 per year for their trust fees alone, perhaps for decades, not including "little" extras like $16,000 to oversee the D'Attilos purchase of a $239,000 property.

In sum, these and other misrepresentations by respondents in their reply should not be allowed to stand unchallenged when the Panel considers the very serious matters that have been raised.

Finally, I respectfully request that any future decision be sent via email (legalmalpractice@gmail.com) and/or facsimile (815-846-1664) rather than or in addition to by mail, since I will be away various times during the summer and I would like to be notified soon as possible of any Panel determination.

Respectfully submitted,



ON BEHALF OF THE COMPLAINANTS,
LAW OFFICES OF HOWARD ALTSCHULER
Howard Altschuler, Esq.
21 Perkins Rd.
Bethany CT 06524
1-234-567-9897
Email: legalmalpractice@gmail.com
www.legal-malpractice.com
cc via email: Mark Dubois, Esq. MDubois@geraghtybonnano.com
Michael Bowler, Esq. (Michael.Bowler@jud.ct.gov)

STATE OF CONNECTICUT
JUDICIAL BRANCH

STAMFORD/NORWALK JUDICIAL DISTRICT
GRIEVANCE PANEL

Eugene J. Riccio, *Grievance Counsel*

P.O. Box 9118
Bridgeport, CT 06601
(203) 367-7440

June 18, 2015

Howard Altschuler, Esq.
21 Perkins Road
Bethany, CT 06524

Re: *D'Attilo vs. Gallant*
Grievance Complaint #: 15-0142
D'Attilo vs. Iannantuoni
Grievance Complaint #: 15-0143

Dear Attorney Altschuler,

Thank you for your letter of June 12th. I will present your request to be allowed to file a reply to the Respondent's answer to the Stamford/Norwalk Grievance Panel ("Panel"), and will advise you of its decision. In addition, please be advised that the Panel does have a non-attorney member, Kevin McKiernan of Darien, Connecticut. Thank you.

Very truly yours,

Eugene J. Riccio
Counsel to the Panel

EJR:cew
cc: Mark A. Dubois, Esq.
Stamford/Norwalk Grievance Panel

Howard Altschuler

From: Kulas, Stephen <Steven.Kulas@jud.ct.gov>
Sent: Thursday, June 18, 2015 9:56 AM
To: Howard Altschuler
Subject: RE: D'Attilo Grievance

Dear Attorney Altschuler,

Please be advised that after contacting the appropriate authority in Hartford, I have confirmed that the Grievance Panel has no authority to order the Respondents to turn over documents to them.

Further, the Grievance Panel has determined that it does now have sufficient information to make a determination in this matter and will be issuing a decision shortly.

Very truly yours,

Steven P. Kulas, Esq.

203 881 8290

From: Howard Altschuler [legalmalpractice@gmail.com]
Sent: Tuesday, June 16, 2015 1:26 PM
To: Kulas, Stephen
Cc: Anuzzo@nuzzo-roberts.com; Bowler, Michael
Subject: D'Attilo Grievance

TO: Steven P. Kulas, Esq.
Grievance Counsel, Fairfield Judicial District Grievance
12 Bank Street, 2nd Flr. Seymour CT 06483
VIA EMAIL Steven.Kulas@jud.ct.gov and FIRST CLASS MAIL
CC via EMAIL: Anthony Nuzzo, Esq. (Anuzzo@nuzzo-roberts.com) and Michael Bowler, Esq. (Michael.Bowler@jud.ct.gov)
RE: Grievances #15-0137 through #15-041

Dear Attorney Kulas,

I mailed the original and six copies of my June 15, 2015 letter to you. You should receive it tomorrow (tracking # 9400109699937671608556).

I also want to correct an error in the second paragraph of page two of my June 15 letter: the Grievance Panel that Attorney Bloss serves on received and returned the Day Pitney grievances, not the grievances for the Koskoff respondents. As I understand it, your Panel received the Koskoff grievances originally, and did not return it for re-assignment. The point of that paragraph remains the same, with that correction. I apologize for the error. I will send the original of this email to you, along with six copies, via first-class mail.

Please let me know if you have any questions.

Sincerely yours,

Howard Altschuler, Esq.
1-234-567-9897
ADMITTED:

Howard Altschuler

From:	Howard Altschuler <legalmalpractice@gmail.com>
Sent:	Thursday, June 18, 2015 11:44 AM
To:	'Kulas, Stephen'
Cc:	'Anuzzo@nuzzo-roberts.com'; 'Michael.Bowler@jud.ct.gov'
Subject:	RE: D'Attilo Grievance
Sensitivity:	Confidential

Tracking:

Recipient	Read
'Kulas, Stephen'	
'Anuzzo@nuzzo-roberts.com'	Read: 6/18/2015 4:19 PM
'Michael.Bowler@jud.ct.gov'	

TO: Steven P. Kulas, Esq.
Grievance Counsel, Fairfield Judicial District Grievance
12 Bank Street, 2nd Flr. Seymour CT 06483
VIA EMAIL Steven.Kulas@jud.ct.gov and FIRST CLASS MAIL
CC via EMAIL: Anthony Nuzzo, Esq. (Anuzzo@nuzzo-roberts.com) and Michael Bowler, Esq. (Michael.Bowler@jud.ct.gov)
RE: Grievances #15-0137 through #15-041

Dear Attorney Kulas:

I respectfully request reconsideration of the ruling that the Grievance Panel "has no authority to order the Respondents to turn over documents."

Conn. Gen. Stat. § 51-91 states in part:

> a) Any person may be compelled by subpoena signed by competent authority to appear before …. a grievance panel to testify in relation to any matter deemed by the committee, subcommittee or panel to be relevant to any inquiry or investigation by it, and to produce before such committee, subcommittee or panel, for examination, any books or papers which, in its judgment, may be relevant to the inquiry or investigation.
>
> b) The committee, subcommittee or panel, while engaged in the discharge of its duties, shall have the same authority over witnesses as is provided in section 51-35 and may commit for contempt for a period no longer than thirty days.

See U.S. v. Sobotka, 623 F.2d 764, 768 (2d Cir 1980) ("It is not disputed that the Committee has subpoena powers and can compel testimony in relation to any matter deemed by the Committee to be relevant to its inquiry or investigation"). See also *Office of Corp. Counsel v. Freedom of Info. Comm'n*, No. HHBCV095014688, 2010 WL 4514362, at *3 (Conn.

Super. Oct. 12, 2010) ("State-Wide Grievance Committee may subpoena any books or papers which, 'in its judgment' may be relevant").

On another issue, since I am not going to be permitted to file a formal reply, please confirm whether my 12 page letter is going to be part of the record forwarded to the Statewide Grievance Committee after the Panel's initial determination.

Thank you very much.

Respectfully submitted,

Sincerely yours,

Howard Altschuler

Confidential Email
This email message contains confidential information and is intended only for the individual named. If you are not the named email recipient, you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. E-mail transmission cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The sender therefore does not accept liability for any errors or omissions in the contents of this message, which arise as a result of e-mail transmission.

From: Kulas, Stephen [mailto:Steven.Kulas@jud.ct.gov]
Sent: Thursday, June 18, 2015 9:56 AM
To: Howard Altschuler
Subject: RE: D'Attilo Grievance

Dear Attorney Altschuler,

Please be advised that after contacting the appropriate authority in Hartford, I have confirmed that the Grievance Panel has no authority to order the Respondents to turn over documents to them.

Further, the Grievance Panel has determined that it does now have sufficient information to make a determination in this matter and will be issuing a decision shortly.

Very truly yours,

Steven P. Kulas, Esq.

203 881 8290

From: Howard Altschuler [legalmalpractice@gmail.com]
Sent: Tuesday, June 16, 2015 1:26 PM
To: Kulas, Stephen
Cc: Anuzzo@nuzzo-roberts.com; Bowler, Michael
Subject: D'Attilo Grievance
TO: Steven P. Kulas, Esq.
Grievance Counsel, Fairfield Judicial District Grievance
12 Bank Street, 2nd Flr. Seymour CT 06483
VIA EMAIL Steven.Kulas@jud.ct.gov and FIRST CLASS MAIL
CC via EMAIL: Anthony Nuzzo, Esq. (Anuzzo@nuzzo-roberts.com) and Michael Bowler, Esq. (Michael.Bowler@jud.ct.gov)
RE: Grievances #15-0137 through #15-041

Howard Altschuler

From:	Howard Altschuler <legalmalpractice@gmail.com>
Sent:	Thursday, June 18, 2015 6:18 PM
To:	'Kulas, Stephen'
Cc:	'Anuzzo@nuzzo-roberts.com'; 'Michael.Bowler@jud.ct.gov'
Subject:	RE: D'Attilo Grievance
Attachments:	2015-06-18 Affidavit of Mark Greany, Esq. SKM_364e15061814200.pdf
Importance:	High

Tracking:

Recipient	Read
'Kulas, Stephen'	
'Anuzzo@nuzzo-roberts.com'	Read: 6/18/2015 6:22 PM
'Michael.Bowler@jud.ct.gov'	

TO: Steven P. Kulas, Esq.
Grievance Counsel, Fairfield Judicial District Grievance
12 Bank Street, 2nd Flr. Seymour CT 06483
VIA EMAIL Steven.Kulas@jud.ct.gov and FIRST CLASS MAIL
CC via EMAIL: Anthony Nuzzo, Esq. (Anuzzo@nuzzo-roberts.com) and Michael Bowler, Esq. (Michael.Bowler@jud.ct.gov)
RE: Grievances #15-0137 through #15-041

Dear Attorney Kulas,

I enclose a copy of an extremely important document for the above caption case that I respectfully request be made a part of the record and be considered by the Panel in its determination of probable cause. I just received this a short while ago via email from California. It is a sworn affidavit Mark Greany, Esq. where he specifically addresses Michael Koskoff's allegations about Mark Greany's purported involvement in negotiations. Attorney Greany's affidavit adds further evidence that the KKB respondents are materially misrepresenting the facts (as I briefly summarized in my letter to you the other day, requesting permission to reply).

I will send the original printed PDF along with six copies to you in tomorrow's mail. I expect to get the original affidavit via Federal Express, but I assume that the Panel does not need the actual original of that. If you do, please let me know and I will provide that upon receipt.

Please confirm whether the enclosed document (and my letter) will be made a part of the record and considered by the Panel

Respectfully submitted,

Howard Altschuler, Esq.
1-234-567-9897
ADMITTED:

STATE COURTS:
CONNECTICUT
NEW JERSEY

AFFIDAVIT OF MARK GREANY, ESQ.

1. I, Mark M. Greany, being over 18 years of age, and having been duly sworn, depose and say, I certify under penalty of perjury under the laws of the State of California that the following is true and correct to the best of my knowledge:

2. I am a citizen and resident of the State of California, and an attorney admitted to practice in California, with an office address for my legal practice at 12636 High Bluff Drive #400, San Diego, CA 92130.

3. I have recently been made aware of certain claims about my alleged involvement in the negotiation of a March 21, 2003 retainer agreement between Cathy and Domenic D'Attilo and the Connecticut law firm of Koskoff, Koskoff & Bieder, regarding a medical malpractice case involving Danny D'Attilo.

4. I did not represent the D'Atillo family. I did not provide legal advice to the D'Atillo family in connection with that matter. I did not provide any legal advice to the D'Atillo family regarding any retainer agreements.

5. My involvement in this matter was limited to recommending the Koskoff firm to the D'Atillo family (on the basis of a recommendation that I received from a friend of mine who practices in the area of medical malpractice).

6. I called the Koskoff firm and told an employee there that I was not interested in a referral fee, and accordingly I would appreciate the professional courtesy of having them discount the fee to the D'Atillos. I don't remember if the employee was a male or female, or whether it was an attorney that spoke with me.

7. My phone call was limited to my request for a discount from the usual fee that Koskoff would charge to the D'Atillos.

8. In 2003 I was practicing primarily as a Criminal Defense attorney in Connecticut, and as an attorney representing clients in residential real estate transactions. I have no recollection of any discussion regarding a sliding scale, waiver of statutory provisions, or the Salerno case. I have no recollection of discussing and/or agreeing to the terms of a retainer agreement with Attorney Koskoff or anyone else at the Koskoff firm and I did not provide any advice to the D'Atillos regarding any retainer agreement or its terms and conditions.

9. My understanding of fee arrangements at that time (2003) was that a referring attorney often will be compensated for the referral (in conformity with the rules of professional practice). I offered to forgo any referral fee in exchange for a professional courtesy from the Koskoff firm to discount their fee to the D'Atillos

10. I did this out of compassion for the D'Atillo family. Domenic D'Atillo's sister Rosanna Mercuri was the "Nanny" to my son Dylan at the time. She was like a family member to me, my wife and my son.

Mark Greany

Signature of Mark M. Greany, Esq.

State of California County of San Diego,

On June 18, 2012 15 MB before me, M. Busch, Notary Public (notary) personally appeared Mark M. Greany, who proved to me on the basis of satisfactory evidence to ~~be~~ the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Signature M. Busch (Seal)

CSC1 M. BUSCH COMM. #2025762 NOTARY PUBLIC-CALIFORNIA SAN DIEGO COUNTY My Commission Expires MAY 23, 2017 CSC1

Howard Altschuler

From: Kulas, Stephen <Steven.Kulas@jud.ct.gov>
Sent: Friday, June 19, 2015 10:00 AM
To: Howard Altschuler
Subject: RE: D'Attilo Grievance

I will accept this information but nothing after this.

Attorney Kulas

From: Howard Altschuler [legalmalpractice@gmail.com]
Sent: Thursday, June 18, 2015 6:18 PM
To: Kulas, Stephen
Cc: Anuzzo@nuzzo-roberts.com; Bowler, Michael
Subject: RE: D'Attilo Grievance

TO: Steven P. Kulas, Esq.
Grievance Counsel, Fairfield Judicial District Grievance
12 Bank Street, 2nd Flr. Seymour CT 06483
VIA EMAIL Steven.Kulas@jud.ct.gov and FIRST CLASS MAIL
CC via EMAIL: Anthony Nuzzo, Esq. (Anuzzo@nuzzo-roberts.com) and Michael Bowler, Esq. (Michael.Bowler@jud.ct.gov)
RE: Grievances #15-0137 through #15-041

Dear Attorney Kulas,

I enclose a copy of an extremely important document for the above caption case that I respectfully request be made a part of the record and be considered by the Panel in its determination of probable cause. I just received this a short while ago via email from California. It is a sworn affidavit Mark Greany, Esq. where he specifically addresses Michael Koskoff's allegations about Mark Greany's purported involvement in negotiations. Attorney Greany's affidavit adds further evidence that the KKB respondents are materially misrepresenting the facts (as I briefly summarized in my letter to you the other day, requesting permission to reply).

I will send the original printed PDF along with six copies to you in tomorrow's mail. I expect to get the original affidavit via Federal Express, but I assume that the Panel does not need the actual original of that. If you do, please let me know and I will provide that upon receipt.

Please confirm whether the enclosed document (and my letter) will be made a part of the record and considered by the Panel

Respectfully submitted,

Howard Altschuler, Esq.
1-234-567-9897
ADMITTED:

STATE COURTS:
CONNECTICUT
NEW JERSEY
NEW YORK

Howard Altschuler

From: Howard Altschuler <legalmalpractice@gmail.com>
Sent: Monday, June 22, 2015 9:51 AM
To: 'Kulas, Stephen'
Cc: 'Anuzzo@nuzzo-roberts.com'; 'Michael.Bowler@jud.ct.gov'
Subject: RE: D'Attilo Grievance

Tracking:

Recipient	Read
'Kulas, Stephen'	Read: 6/22/2015 9:59 AM
'Anuzzo@nuzzo-roberts.com'	Read: 6/22/2015 10:01 AM
'Michael.Bowler@jud.ct.gov'	

Dear Attorney Kulas:

Thank you. You should receive the affidavit and cover email (and copies) in today's mail. In addition, you should also receive today the original and six copies of my email to you responding to your email that the "Grievance Panel has no authority to order the Respondents to turn over documents." I request confirmation as to whether you are reconsidering that, in light of Conn. Gen. Stat. § 51-91, which specifically authorizes the Grievance Panel to obtain documents. Also, would you confirm whether my June 15, 2015 letter will be made of a part of the record since a formal reply is not being permitted? Thank you very much.

Sincerely yours,

Howard Altschuler

Confidential Email
This email message contains confidential information and is intended only for the individual named. If you are not the named email recipient, you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. E-mail transmission cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The sender therefore does not accept liability for any errors or omissions in the contents of this message, which arise as a result of e-mail transmission.

From: Kulas, Stephen [mailto:Steven.Kulas@jud.ct.gov]
Sent: Friday, June 19, 2015 10:00 AM
To: Howard Altschuler
Subject: RE: D'Attilo Grievance

I will accept this information but nothing after this.

Attorney Kulas

From: Howard Altschuler [legalmalpractice@gmail.com]
Sent: Thursday, June 18, 2015 6:18 PM
To: Kulas, Stephen
Cc: Anuzzo@nuzzo-roberts.com; Bowler, Michael
Subject: RE: D'Attilo Grievance

TO: Steven P. Kulas, Esq.
Grievance Counsel, Fairfield Judicial District Grievance

Howard Altschuler

From: Kulas, Stephen <Steven.Kulas@jud.ct.gov>
Sent: Monday, June 22, 2015 11:15 AM
To: Howard Altschuler
Cc: Anuzzo@nuzzo-roberts.com; Bowler, Michael
Subject: RE: D'Attilo Grievance

Dear Attorney Altschuler

Let me clarify my answer to your concerns:
1. If the Grievance Panel requires information from either the Complainant or the Respondent, it will request it pursuant to its Statutory and Practice Book Authority;
2. The Grievance Panel will not order either party to turn any materials directly over to the other party.

If you have any questions please feel free to call me.

I have already in my reply to your June 15th email said that I will submit that letter, but nothing else after that.

Very truly

Steven P. Kulas

From: Howard Altschuler [legalmalpractice@gmail.com]
Sent: Monday, June 22, 2015 9:51 AM
To: Kulas, Stephen
Cc: Anuzzo@nuzzo-roberts.com; Bowler, Michael
Subject: RE: D'Attilo Grievance

Dear Attorney Kulas:

Thank you. You should receive the affidavit and cover email (and copies) in today's mail. In addition, you should also receive today the original and six copies of my email to you responding to your email that the "Grievance Panel has no authority to order the Respondents to turn over documents." I request confirmation as to whether you are reconsidering that, in light of Conn. Gen. Stat. § 51-91, which specifically authorizes the Grievance Panel to obtain documents. Also, would you confirm whether my June 15, 2015 letter will be made of a part of the record since a formal reply is not being permitted? Thank you very much.

Sincerely yours,

Howard Altschuler

Confidential Email
This email message contains confidential information and is intended only for the individual named. If you are not the named email recipient, you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. E-mail transmission cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The sender therefore does not accept liability for any errors or omissions in the contents of this message, which arise as a result of e-mail transmission.

STATE OF CONNECTICUT
JUDICIAL BRANCH

STAMFORD/NORWALK JUDICIAL DISTRICT
GRIEVANCE PANEL

Eugene J. Riccio, *Grievance Counsel*

P.O. Box 9118
Bridgeport, CT 06601
(203) 367-7440

July 6, 2015

Via Facsimile

Howard Altschuler, Esq.
21 Perkins Road
Bethany, CT 06524

Re: *D'Attilo vs. Gallant*
Grievance Complaint #: 15-0142

Dear Attorney Altschuler,

The Stamford/Norwalk Grievance Panel has granted your request to file a reply to the Respondent's answer. The reply should not exceed five pages and be submitted to me by Tuesday, July 21st. Thank you.

Very truly yours,

Eugene J. Riccio
Counsel to the Panel

EJR:cew
cc: Mark A. Dubois, Esq.
Stamford/Norwalk Grievance Panel

STATE OF CONNECTICUT
JUDICIAL BRANCH

FAIRFIELD JUDICIAL DISTRICT GRIEVANCE PANEL
Steven P. Kulas, *Grievance Counsel*

12 Bank Street
Seymour, CT 06483
(203) 881-8390

July 17, 2015

Mr. & Mrs. Domenic D'Attilo
C/O Attorney Howard Atlschuler
21 Perkins Road
Bethany CT 06524

Attorney Michael Koskoff
Koskoff, Koskoff and Bieder, PC
350 Fairfield Avenue, 5th floor
Bridgeport CT 06604

RE: D'ATTILO V KOSKOFF Grievance Complaint #15- 0140: Probable Cause Found:

Dear Mr. & Mrs. D'Attilo and Attorney Koskoff,

Pursuant to Connecticut Practice Book section 2 – 32 and Rule 1 of the Grievance Panel Rules of Procedure, the Grievance Panel for the Judicial District of Fairfield, (hereafter "Grievance Panel") has completed its investigation of the above-referenced Complaint. At a meeting of the Grievance Panel held on June 29th, 2015 the Grievance Panel reviewed the materials submitted and found that no further evidence was necessary.

The Grievance Panel carefully reviewed documents submitted by both the Complainant and the Respondent and determined that the nature of the circumstances of this case does justify a finding of probable cause exists to believe that the above-referenced Attorney is guilty of misconduct.

The Complainants, acting through their Attorney, Attorney Altschuler, have filed this grievance against the Respondent, in connection with the Respondents law firms

representation of the Complainants and their minor child in a medical Malpractice action and the subsequent settlement of the same.

The Complainants allege that the Respondent, along with four (4) other members of the law firm and two (2) other Attorneys from a different law firm, conspired to deprive the Complainants of several millions of dollars from the proceeds of the settlement of the medical malpractice case.

Page forty one (41) of the Complaint alleges that the Respondent has violated sections 1.4, 1.5, 1.6, 1.7, 1.8, 1.9, 1.14, 1.15, 3.3, 4.1, 5.1, 5.2, 5.3, 7.2, 8.3 and 8.4 of the Rules of Professional Conduct.

The Respondent has filed an answer through Counsel, Attorney Anthony Nuzzo, Jr.

After reviewing the materials submitted by both parties the Grievance Panel makes the following findings of fact:

1. The Complaint submitted on behalf of the Complainants is forty two (42) pages long;
2. There are one hundred and seventy eight (178) pages of attached exhibits to that complaint;
3. The Respondent was actively involved in the Complainants lawsuit, sometime after the Complainants signed a retainer agreement with his law firm;
4. The retainer agreement, signed by the Complainants, dated March 21st 2003, contained language that if the Connecticut Statute governing the retainer agreement was not in effect at the time the monies were to be distributed to the client, the Respondents law firm should have received 28% of the total recovered;
5. The fee agreement signed on March 21st 2003 is the only signed fee agreement between the Complainants and the Respondents law firm;
6. The Connecticut Statute governing the signed fee agreement was amended effective July 13th 2005;
7. The Respondents represented the Complainants throughout the litigation process, this process took several years, as there was extensive discovery and the first trial ended in a hung jury, in 2009;
8. In 2011 the second trial ended in a verdict in favor of the Complainants and with an award of in excess of fifty eight million dollars being awarded;
9. The losing party filed an appeal of the verdict shortly thereafter;
10. During the pendency of the appeal, the parties undertook mediation in an effort to

settle the Complainants case;

11. On January 11, 2012 the Complainants signed a settlement agreement and a settlement authorization;
12. This settlement authorization contained a provision for Attorneys fees in the amount of 28%;
13. Prior to signing this agreement, the Complainants had discussions with a member of the Respondents law firm over the fees due under the original fee agreement, signed in 2003;
14. The Respondent relies on the signed settlement agreement as proof that the Complainants were aware of the applicable fee to be charged, (28%) and had agreed to it;
15. The Complainants assert that since the Connecticut Statute governing Attorney fee agreements was "only amended" in 2005, subsequent to the signing of the original fee agreement that the Complainants had signed, that the Respondent had a duty to fully explain to them the appropriate Attorneys fee to be deducted from the settlement proceeds;
16. The Complainants also assert that the amendment of the Connecticut Statute in 2005 did not entitle the Respondents law firm to receive 28% of the settlement proceeds;
17. The complainants assert that the actions of the Respondent and the other Attorneys, once the Complainants signed the settlement authorization were designed to insure that the Respondent and his law firm received 28% of the settlement proceeds, when they were not entitled to do so, these actions include encouraging the Complainants to change their residence, seeking a more "favorable" Probate Court, and failing to adequately explain the reason for the 28% Attorneys fees;
18. At the time of the settlement process was on going the Complainants were in a great deal of debt;
19. The Grievance Panel has not received any written explanation of the Attorneys fees charged, other that the signed settlement authorization;
20. The Respondent and or members of his law firm distributed the funds from the settlement of the law suit, including the payment of their legal fees in May 2012;
21. By virtue of the Respondents close involvement in the settlement process, he knew, or should have known of the Complainants concerns regarding the fee agreement ;
22. Other than a signed settlement statement agreement the Respondent has not submitted any further documentation to show that the Complainants concerns over the Attorneys fees were satisfied;
23. Because of the unresolved issues concerning the legal fees the Grievance Panel finds that there is a conflict of interest between the Respondent and the Complainants.

After reviewing all the materials submitted by both parties and the above findings of fact, the Grievance Panel finds that the Respondent failed to adequately answer the issues raised by the Complainants regarding the appropriateness of the Attorney fees charged to the Complainant prior to the distribution of the proceeds of the settlement monies.

After reviewing all the materials submitted by both parties and the above findings of fact, the Grievance Panel finds that there is probable cause that the Respondent has violated section 1.6) of The Rules of Professional Conduct, and probable cause was found to exist.

After reviewing all the materials submitted by both parties and the above findings of fact, the Grievance Panel finds that there is probable cause that the Respondent has violated section 1.15.(c) of The Rules of Professional Conduct, and therefore probable cause was found to exist.

The Grievance Panel is recommending that The Statewide Grievance Panel in Hartford reviews this file

Very truly yours,

Steven P. Kulas.

SPK/dak
CC: Attorney Anthony Nuzzo
CC: Chief Disciplinary Office

STATE OF CONNECTICUT
JUDICIAL BRANCH

FAIRFIELD JUDICIAL DISTRICT GRIEVANCE PANEL
Steven P. Kulas, *Grievance Counsel*
12 Bank Street
Seymour, CT 06483
(203) 881-8390

July 17, 2015

Mr. & Mrs. Domenic D'Attilo
C/O Attorney Howard Atlschuler
21 Perkins Road
Bethany CT 06524

Attorney Kathleen L. Nastri
Koskoff, Koskoff and Bieder, PC
350 Fairfield Avenue, 5th floor
Bridgeport CT 06604

RE: D'ATTILO V NASTRI Grievance Complaint #15- 0137: Probable Cause Found:

Dear Mr. & Mrs. D'Attilo and Attorney Nastri,

Pursuant to Connecticut Practice Book section 2 – 32 and Rule 1 of the Grievance Panel Rules of Procedure, the Grievance Panel for the Judicial District of Fairfield, (hereafter "Grievance Panel") has completed its investigation of the above-referenced Complaint. At a meeting of the Grievance Panel held on June 29th, 2015 the Grievance Panel reviewed the materials submitted and found that no further evidence was necessary.

The Grievance Panel carefully reviewed documents submitted by both the Complainant and the Respondent and determined that the nature of the circumstances of this case does justify a finding of probable cause exists to believe that the above-referenced Attorney is guilty of misconduct.

The Complainants, acting through their Attorney, Attorney Altschuler, have filed this grievance against the Respondent, in connection with the Respondents law firms

representation of the Complainants and their minor child in a medical Malpractice action and the subsequent settlement of the same.

The Complainants allege that the Respondent, along with four (4) other members of the law firm and two (2) other Attorneys from a different law firm, conspired to deprive the Complainants of several millions of dollars from the proceeds of the settlement of the medical malpractice case.

Page forty one (41) of the Complaint alleges that the Respondent has violated sections 1.4, 1.5, 1.6, 1.7, 1.8, 1.9, 1.14, 1.15, 3.3, 4.1, 5.1, 5.2, 5.3, 7.2, 8.3 and 8.4 of the Rules of Professional Conduct.

The Respondent has filed an answer through Counsel, Attorney Anthony Nuzzo, Jr.

After reviewing the materials submitted by both parties the Grievance Panel makes the following findings of fact:

1. The Complaint submitted on behalf of the Complainants is forty two (42) pages long;
2. There are one hundred and seventy eight (178) pages of attached exhibits to that complaint;
3. The Respondent became the Primary Attorney in charge of the Complainants law suit, sometime after the Complainants signed a retainer agreement with her law firm;
4. The retainer agreement, signed by the Complainants, dated March 21st 2003, contained language that if the Connecticut Statute governing the retainer agreement was not in effect at the time the monies were to be distributed to the client, the the Respondents law firm should have received 28% of the total recovered;
5. The fee agreement signed on March 21st 2003 is the only signed fee agreement between the Complainants and the Respondents law firm;
6. The Connecticut Statute governing the signed fee agreement was amended effective July 13th 2005;
7. The Respondents represented the Complainants throughout the litigation process, this process took several years, as there was extensive discovery and the first trial ended in a hung jury, in 2009;
8. In 2011 the second trial ended in a verdict in favor of the Complainants and with an award of in excess of fifty eight million dollars being awarded;
9. The losing party filed an appeal of the verdict shortly thereafter;
10. During the pendency of the appeal, the parties undertook mediation in an effort to

settle the Complainants case;

11. On January 11, 2012 the Complainants signed a settlement agreement and a settlement authorization;
12. This settlement authorization contained a provision for Attorneys fees in the amount of 28%;
13. Prior to signing this agreement, the Complainants had discussions with the Respondent over the fees due, under the original fee agreement, signed in 2003;
14. The Respondent relies on the signed settlement agreement as proof that the Complainants were aware of the applicable fee to be charged, (28%) and had agreed to it;
15. The Complainants assert that since the Connecticut Statute governing Attorney fee agreements was "only amended" in 2005, subsequent to the signing of the original fee agreement that the Complainants had signed, that the Respondent had a duty to fully explain to them the appropriate Attorneys fee to be deducted from the settlement proceeds;
16. The Complainants also assert that the amendment of the Connecticut Statute in 2005 did not entitle the Respondents law firm to receive 28% of the settlement proceeds;
17. The complainants assert that the actions of the Respondent and the other Attorneys, once the Complainants signed the settlement authorization were designed to insure that the Respondent and her law firm received 28% of the settlement proceeds, when they were not entitled to do so, these actions include encouraging the Complainants to change their residence, seeking a more "favorable" Probate Court, and failing to adequately explain the reason for the 28% Attorneys fees;
18. At the time of the settlement process was on going the Complainants were in a great deal of debt;
19. The Grievance Panel has not received any written explanation of the Attorneys fees charged, other that the signed settlement authorization;
20. The Respondent and or members of her law firm distributed the funds from the settlement of the law suit, including the payment of their legal fees in May 2012;
21. Because of the unresolved issues concerning the legal fees the Grievance Panel finds that there is a conflict of interest between the Respondent and the Complainants;
22. Other than a signed settlement statement agreement the Respondent has not submitted any further documentation to show that the Complainants concerns over the Attorneys fees were satisfied.

After reviewing all the materials submitted by both parties and the above findings of

fact, the Grievance Panel finds that the Respondent failed to adequately answer the issues raised by the Complainants regarding the appropriateness of the Attorney fees charged to the Complainant prior to the distribution of the proceeds of the settlement monies.

After reviewing all the materials submitted by both parties and the above findings of fact, the Grievance Panel finds that there is probable cause that the Respondent has violated section 1.6) of The Rules of Professional Conduct, and probable cause was found to exist.

After reviewing all the materials submitted by both parties and the above findings of fact, the Grievance Panel finds that there is probable cause that the Respondent has violated section 1.15.(c) of The Rules of Professional Conduct, and therefore probable cause was found to exist.

The Grievance Panel is recommending that The Statewide Grievance Panel in Hartford reviews this file

Very truly yours,

Steven P. Kulas.

SPK/dak
CC: Attorney Anthony Nuzzo
CC: Chief Disciplinary Office

STATE OF CONNECTICUT
JUDICIAL BRANCH

FAIRFIELD JUDICIAL DISTRICT GRIEVANCE PANEL
Steven P. Kulas, *Grievance Counsel*
12 Bank Street
Seymour, CT 06483
(203) 881-8390

July 17, 2015

Mr. & Mrs. Domenic D'Attilo
C/O Attorney Howard Altschuler
21 Perkins Road
Bethany CT 06524

Attorney Joel H. Lichtenstein
350 Fairfield Avenue
Bridgeport CT 06604

RE: D'ATTILO V LICHTENSTEIN Grievance Complaint #15-0141: No Probable Cause Found:

Dear Mr. & Mrs. D'Attilo and Attorney Lichtenstein,

Pursuant to Connecticut Practice Book section 2 – 32 and Rule 1 of the Grievance Panel Rules of Procedure, the Grievance Panel for the Judicial District of Fairfield, (hereafter "Grievance Panel") has completed its investigation of the above-referenced Complaint. At a meeting of the Grievance Panel held on June 29, 2015, the Grievance Panel determined that no further action was necessary in order to reach a decision. The Grievance Panel carefully reviewed documents submitted by both the Complainant and the Respondent and determined that the nature of the circumstances of this case do not justify a finding of probable cause, to believe that the above-referenced Attorney is guilty of misconduct.

The Complainants, acting through their Attorney, Attorney Altschuler, have filed this grievance complaint against the Respondent, in connection with the Respondents Law Firms representation of the Complainants and their minor child in a medical malpractice action and the subsequent settlement of the same.

The Complainants allege that the Respondent, along with four (4) other members of his Law Firm, and two other Attorneys from a different Law Firm, conspired to deprive the Complainants of several million dollars from the proceeds of the settlement of the medical malpractice case.

Page forty one (41) of the Complaint alleges that the Respondent violated sections 1.4, 1.5, 1.6, 1.7, 1.8, 1.9, 1.14, 1.15, 3.3, 4.1, 5.1, 5.2, 5.3, 7.1, 7.2, 8.3 and 8.4 of The Rules of Professional Conduct.

The Respondent has filed a response through Counsel, Attorney Anthony Nuzzo, Jr.

After reviewing all materials submitted by both parties the Grievance Panel makes the following findings of fact:

1. The Complaint submitted on behalf of the Complainants is forty two (42) pages long;
2. There are one hundred and seventy eight (178) pages of attached exhibits to the Complaint;
3. The allegations in the Complaint indicate that the Respondent was involved with the Complainants at the time the retainer agreement was signed;
4. The Complainants have alleged that the Respondents actions during the approval of the settlement of the Medical Malpractice Case, by the Probate Court in Bethel, Connecticut, furthered the conspiracy to deprive the Complainants of their monies;
5. The Complainants allege that the Respondent participated in assisting other members of his Law Firm to have the settlement agreement reviewed by a "favorable" Probate Judge;

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 1.4 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 1.5 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 1.6 of The Rules of

Professional Conduct, and, therefore no probable cause was found to exist.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 1.7 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 1.8 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 1.9 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 1.14 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 1.5 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 3.3 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 4.1 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 5.1 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 5.2 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 5.3 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 7.1 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 7.2 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 8.3 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 8.4 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

On the basis of the aforementioned, the Grievance Panel determined that there is no probable cause to find that the Attorney is guilty of any misconduct and accordingly dismissed the complaint.

In accordance with the Connecticut Practice Book, the dismissal of this Complaint is a final determination, is not subject to review and no further action will be taken by any disciplinary authority.

Very truly yours,

Steven P. Kulas

SPK/dak
cc. Attorney Anthony Nuzzo, Jr.

STATE OF CONNECTICUT
JUDICIAL BRANCH

FAIRFIELD JUDICIAL DISTRICT GRIEVANCE PANEL
Steven P. Kulas, *Grievance Counsel*

12 Bank Street
Seymour, CT 06483
(203) 881-8390

July 17, 2015

Mr. & Mrs. Domenic D'Attilo
C/O Attorney Howard Altschuler
21 Perkins Road
Bethany CT 06524

Attorney William Bloss
350 Fairfield Avenue
Bridgeport CT 06604

RE: D'ATTILO V BLOSS Grievance Complaint #15-0139: No Probable Cause Found:

Dear Mr. & Mrs. D'Attilo and Attorney Bloss,

Pursuant to Connecticut Practice Book section 2 – 32 and Rule 1 of the Grievance Panel Rules of Procedure, the Grievance Panel for the Judicial District of Fairfield, (hereafter "Grievance Panel") has completed its investigation of the above-referenced Complaint. At a meeting of the Grievance Panel held on June 29, 2015, the Grievance Panel determined that no further action was necessary in order to reach a decision. The Grievance Panel carefully reviewed documents submitted by both the Complainant and the Respondent and determined that the nature of the circumstances of this case do not justify a finding of probable cause, to believe that the above-referenced Attorney is guilty of misconduct.

The Complainants, acting through their Attorney, Attorney Altschuler, have filed this grievance complaint against the Respondent, in connection with the Respondents Law Firms representation of the Complainants and their minor child in a medical malpractice action and the subsequent settlement of the same.

The Complainants allege that the Respondent, along with four (4) other members of his Law

Firm, and two other Attorneys from a different Law Firm, conspired to deprive the Complainants of several million dollars from the proceeds of the settlement of the medical malpractice case.

Page forty one (41) of the Complaint alleges that the Respondent violated sections 1.4, 1.5, 1.6, 1.7, 1.8, 1.9, 1.14, 1.15, 3.3, 4.1, 5.1, 5.2, 5.3, 7.1, 7.2, 8.3 and 8.4 of The Rules of Professional Conduct.

The Respondent has filed a response through Counsel, Attorney Anthony Nuzzo, Jr.

After reviewing all materials submitted by both parties the Grievance Panel makes the following findings of fact:

1. The Complaint submitted on behalf of the Complainants is forty two (42) pages long;
2. There are one hundred and seventy eight (178) pages of attached exhibits to the Complaint;
3. The Complainant mentions the Respondent by name in only two (2) paragraphs of the Complaint;
4. The Complainant has failed to identify any specific actions by this individual Respondent that may have violated any sections of The Rules of Professional Conduct;
5. Further, the Complainants have failed to identify any evidence to support their claims that the Respondent was part of a conspiracy to deprive them of monies owed.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 1.4 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 1.5 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 1.6 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 1.7 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 1.8 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 1.9 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 1.14 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 1.5 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 3.3 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 4.1 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 5.1 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 5.2 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 5.3 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 7.1 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 7.2 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 8.3 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 8.4 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

On the basis of the aforementioned, the Grievance Panel determined that there is no probable cause to find that the Attorney is guilty of any misconduct and accordingly dismissed the complaint.

In accordance with the Connecticut Practice Book, the dismissal of this Complaint is a final determination, is not subject to review and no further action will be taken by any disciplinary authority.

Very truly yours,

Steven P. Kulas

SPK/dak
cc. Attorney Anthony Nuzzo, Jr.

STATE OF CONNECTICUT
JUDICIAL BRANCH

FAIRFIELD JUDICIAL DISTRICT GRIEVANCE PANEL
Steven P. Kulas, *Grievance Counsel*

12 Bank Street
Seymour, CT 06483
(203) 881-8390

July 17, 2015

Mr. & Mrs. Domenic D'Attilo
C/O Attorney Howard Altschuler
21 Perkins Road
Bethany CT 06524

Attorney James D. Horwitz
350 Fairfield Avenue
Bridgeport CT 06604

RE: D'ATTILO V HORWITZ Grievance Complaint #15-0138: No Probable Cause Found:

Dear Mr. & Mrs. D'Attilo and Attorney Horwitz,

Pursuant to Connecticut Practice Book section 2 – 32 and Rule 1 of the Grievance Panel Rules of Procedure, the Grievance Panel for the Judicial District of Fairfield, (hereafter "Grievance Panel") has completed its investigation of the above-referenced Complaint. At a meeting of the Grievance Panel held on June 29, 2015, the Grievance Panel determined that no further action was necessary in order to reach a decision. The Grievance Panel carefully reviewed documents submitted by both the Complainant and the Respondent and determined that the nature of the circumstances of this case do not justify a finding of probable cause, to believe that the above-referenced Attorney is guilty of misconduct.

The Complainants, acting through their Attorney, Attorney Altschuler, have filed this grievance complaint against the Respondent, in connection with the Respondents Law Firms representation of the Complainants and their minor child in a medical malpractice action and the subsequent settlement of the same.

The Complainants allege that the Respondent, along with four (4) other members of his Law

Firm, and two other Attorneys from a different Law Firm, conspired to deprive the Complainants of several million dollars from the proceeds of the settlement of the medical malpractice case.

Page forty one (41) of the Complaint alleges that the Respondent violated sections 1.4, 1.5, 1.6, 1.7, 1.8, 1.9, 1.14, 1.15, 3.3, 4.1, 5.1, 5.2, 5.3, 7.1, 7.2, 8.3 and 8.4 of The Rules of Professional Conduct.

The Respondent has filed a response through Counsel, Attorney Anthony Nuzzo, Jr.

After reviewing all materials submitted by both parties the Grievance Panel makes the following findings of fact:

1. The Complaint submitted on behalf of the Complainants is forty two (42) pages long;
2. There are one hundred and seventy eight (178) pages of attached exhibits to the Complaint;
3. The allegations in the Complaint against the Respondent arise out of his alleged actions after the conclusion of the case in the trial court and the settlement process;
4. The Complainants have alleged that the Respondents actions during the approval of the settlement of the Medical Malpractice Case, by the Probate Court in Bethel, Connecticut, furthered the conspiracy to deprive the Complainants of their monies;
5. The Complainants allege that the Respondent participated in assisting other members of his Law Firm to have the settlement agreement reviewed by a "favorable" Probate Judge;
6. The Complainants also allege that the Respondent failed to correct a misrepresentation made by Attorney Brad Gallant before the Northern Fairfield County Probate Court.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 1.4 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 1.5 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 1.6 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 1.7 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 1.8 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 1.9 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 1.14 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 1.5 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 3.3 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 4.1 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 5.1 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 5.2 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 5.3 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 7.1 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 7.2 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 8.3 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

After reviewing all materials submitted by both parties the Grievance Panel finds that there is insufficient credible evidence to support a violation of section 8.4 of The Rules of Professional Conduct, and, therefore no probable cause was found to exist.

On the basis of the aforementioned, the Grievance Panel determined that there is no probable cause to find that the Attorney is guilty of any misconduct and accordingly dismissed the complaint.

In accordance with the Connecticut Practice Book, the dismissal of this Complaint is a final determination, is not subject to review and no further action will be taken by any disciplinary authority.

Very truly yours,

Steven P. Kulas

SPK/dak
cc. Attorney Anthony Nuzzo, Jr.

STATE OF CONNECTICUT
JUDICIAL BRANCH

COURT OPERATIONS DIVISION

CHIEF DISCIPLINARY COUNSEL'S OFFICE
Suzanne B. Sutton, *First Assistant Chief Disciplinary Counsel*
100 Washington Street
Hartford, Connecticut 06106
(860) 706-5055 Fax (860) 706-5063
E-mail: Suzanne.Sutton@.jud.ct.gov

July 20, 2015

Domenic D'Atillo
c/o Attorney Howard Altschuler
21 Perkins Road
Bethany, CT 06524

RE: D'ATILLO V. KOSKOFF, GRIEVANCE # 15-0140

Dear Mr. D'Atillo:

I believe that you are aware that there has been a finding of probable cause in the grievance that you filed against the attorney in the above named matter. A finding of probable cause means that there has been a determination that it is more likely than not that one or more of the Rules of Professional Conduct have been violated. The function of our office is assigned to investigate and pursue the grievance complaint at a hearing before the Statewide Grievance Committee. The rule violations that form the basis of the probable cause findings are the only violations that will be addressed at the hearing.

Our office acts in a position similar to that of a prosecutor at the Grievance Committee hearing. Please be aware that we do not represent you individually; however, if you wish to be represented, you are free to retain private counsel to appear with you. We represent the interests of the judicial branch of the state government and see that the interests of justice are served in the investigation and disposition of the grievance. After a complete investigation and research, our office may reach any of a variety of recommendations, ranging from the imposition of discipline in the form of a reprimand or presentment to court, to dismissal of some or all of the charges because misconduct cannot be proven by clear and convincing evidence. In the end, it is up to the Statewide Grievance Committee to decide whether it will adopt or reject our recommendation. You will have the opportunity to address the reviewing committee at the hearing to express your opinion as to discipline, regardless of whether or not you agree with our recommendation.

The grievance will be assigned for a hearing before a reviewing committee of the Statewide Grievance Committee sometime in the next few months. After investigation we will present any recommendation regarding the disposition. At that hearing the

Committee will have to decide whether to accept any proposed disposition, or whether one of the rules has been violated, and if so, what discipline is appropriate. For the grievance committee to impose discipline, we will need to prove the rule violation with enough evidence to convince the committee of the violation by clear and convincing evidence. This requires a greater degree of proof than a finding of probable cause.

We also have the authority to recommend a settlement of this grievance, depending on the nature of the case. A resolution by agreement may enable us to accommodate your goals in filing the grievance, and avoid the uncertainty of an outcome decided by the reviewing committee. At this point, we are unable to determine without further information from you, whether a resolution by agreement is appropriate.

Regardless of our recommendation as to the outcome of the case, your attendance at the hearing is critical to the resolution of the complaint. Therefore, we ask that you make every effort to attend the hearing.

I would like to speak with you to see if there is additional information that you may have, to ask questions that I may have, or to update you regarding the progress of the case. If you have any additional documents or information that you would like the Grievance Committee to consider, you may feel free to forward it to me at the address above.

Kindly contact me at your earliest convenience. I look forward to hearing from you.

Sincerely,

Suzanne B. Sutton
First Asst Chief Disciplinary

SBS/kw

Law Offices of Howard Altschuler

21 Perkins Rd.
Bethany, CT 06524
Voice: (234) 567-9897
Fax: (815) 846-1664
Website: www.legal-malpractice.com
Email: legalmalpractice@gmail.com

ADMITTED:

STATE COURTS:
CT, NJ, NY, PA

FEDERAL APPELLATE COURTS:
UNITED STATES SUPREME COURT
2ND CIR. CT. OF APPEALS
3RD CIR. CT. OF APPEALS
9TH CIR. CT. OF APPEALS

FEDERAL TRIAL COURTS:
SOUTHERN DISTRICT OF NEW YORK
EASTERN DISTRICT OF NEW YORK
DISTRICT OF CONNECTICUT
DISTRICT OF NEW JERSEY

FEDERAL BANKRUPTCY COURTS:
DISTRICT OF CONNECTICUT
SOUTHERN DISTRICT OF NEW YORK

New York Office:
281 Garth Rd.
Building C- 3D
Scarsdale, NY 10583
Please Reply to Bethany Office

July 21, 2015

Michael P. Bowler, Esq.
Statewide Bar Counsel
287 Main Street, Second Floor, Suite Two
East Hartford, CT 06118-1885
VIA EMAIL (Michael.Bowler@jud.ct.gov) AND facsimile 860-568-4953)

Dear Attorney Bowler:

On July 18 I received the Fairfield Panel's decision regarding the Koskoff respondents. Probable cause was found against two respondents, Kathleen Nastri and Michael Koskoff. There was a finding of "no probable cause" regarding William Bloss, James Horwitz, and Joel Lichtenstein.

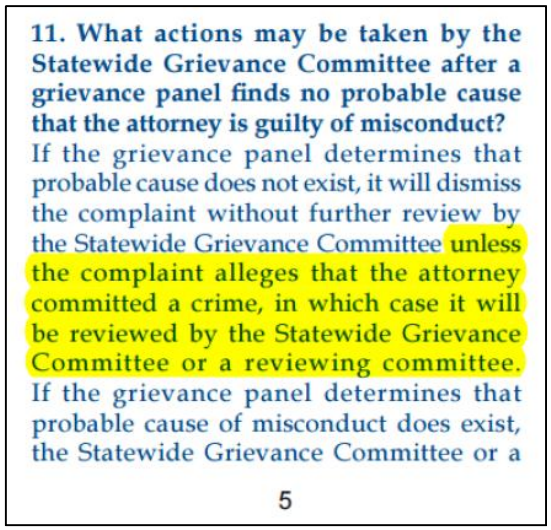
There are significant problems with the Panel's five decisions including factual mistakes, citation of incorrect Rules of Professional Conduct, omission of applicable Rules, contradictory findings, and more. I will address those myriad problems separately. For now, I want to alert the Statewide Grievance Committee to another significant problem that negatively and immediately impacts my clients' rights.

Specifically, the three grievances where no probable cause was found state in their final paragraph: "In accordance with the Connecticut Practice Book, the dismissal of this Complaint is a final determination, is not subject to review and no further action will be taken by any disciplinary authority."

The Panel's statement does not comply with Practice Book §2-32(i)(2) which states in relevant part: "If the panel determines that no probable cause exists that the respondent is guilty of misconduct, it shall dismiss the complaint **unless there is an allegation in the complaint that the respondent committed a crime**. …

[in which case] the panel **shall** file with the statewide grievance committee and with disciplinary counsel its written determination that no probable cause exists …." (Emphasis added)

Rule 11 of the grievance procedures also states as follows (jud.ct.gov/publications/gc008.pdf):

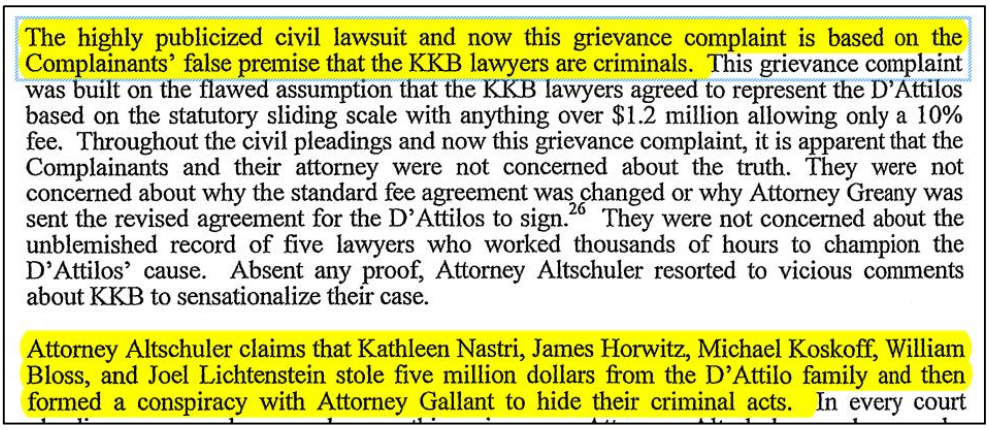


11. What actions may be taken by the Statewide Grievance Committee after a grievance panel finds no probable cause that the attorney is guilty of misconduct?
If the grievance panel determines that probable cause does not exist, it will dismiss the complaint without further review by the Statewide Grievance Committee unless the complaint alleges that the attorney committed a crime, in which case it will be reviewed by the Statewide Grievance Committee or a reviewing committee. If the grievance panel determines that probable cause of misconduct does exist, the Statewide Grievance Committee or a

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Paragraphs 290 to 293 of the Grievance Complaint specifically cite criminal statutes alleged to have been violated. Practice Book §2-40 defines serious crime, in part, as "any felony, any larceny … or any other crime that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or … involves … misrepresentation, fraud, deceit, … misappropriation, theft…." The Grievance Complaint alleges facts, supported by documentary evidence, of just that kind of activity on the part of the respondents.

Moreover, the Koskoff respondents acknowledge in their reply that allegations of criminal activity form the basis of the complaints. For just one example, the Koskoff respondents write (pg. 25):



The highly publicized civil lawsuit and now this grievance complaint is based on the Complainants' false premise that the KKB lawyers are criminals. This grievance complaint was built on the flawed assumption that the KKB lawyers agreed to represent the D'Attilos based on the statutory sliding scale with anything over $1.2 million allowing only a 10% fee. Throughout the civil pleadings and now this grievance complaint, it is apparent that the Complainants and their attorney were not concerned about the truth. They were not concerned about why the standard fee agreement was changed or why Attorney Greany was sent the revised agreement for the D'Attilos to sign.[26] They were not concerned about the unblemished record of five lawyers who worked thousands of hours to champion the D'Attilos' cause. Absent any proof, Attorney Altschuler resorted to vicious comments about KKB to sensationalize their case.

Attorney Altschuler claims that Kathleen Nastri, James Horwitz, Michael Koskoff, William Bloss, and Joel Lichtenstein stole five million dollars from the D'Attilo family and then formed a conspiracy with Attorney Gallant to hide their criminal acts. In every court

In fact, on or about January 28, 2015, I received a phone call from then Chief Disciplinary Counsel Patricia King. She told me she had read the civil complaint online, indicated to me its serious nature regarding the misuse of client funds, and reminded me that I had an ethical obligation to file a copy of the complaint with the Statewide Grievance Committee pursuant to Practice Book §2-43. I told her that I was planning to do so. You and I then discussed how you wanted me to handle the §2-43 filing in conjunction with the grievances of my clients.

There is no doubt that the Grievance Complaint alleges serious criminal conduct: the theft/misappropriation of millions of dollars from my clients. Therefore, the referral of my clients' grievance to the Statewide Grievance Committee for further review is mandatory, even for those grievances where no probable cause was found. I respectfully request that the Panel's failure to follow the Practice Book and the Grievance Rules be corrected.

Unfortunately, this is not the first time that the Fairfield Panel has failed to handle this high profile grievance involving a fellow grievance panel member (William Bloss) and the other high profile attorneys, in a neutral way designed to review all relevant facts to determine probable cause.

For example, in my June 15, 2015 letter, a copy of which I previously sent to you, I requested (1) the right to a formal reply with exhibits, (2) an order from the Panel requiring that the Koskoff respondents turn over the entirety of their internal files, (3) that the respondents be required to affirm under penalty of perjury the truth of their statements (just as all *clients* are obligated to submit grievances against attorneys under penalty of perjury[1]) and (4) that the Panel consider the Koskoff respondents' misstatements of fact to the Panel as a separate ground for finding probable cause.

My requests were either denied or ignored by the Fairfield Panel.

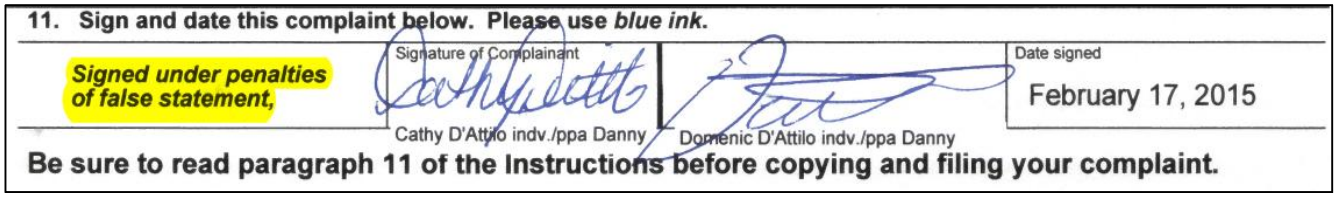
In addition, though I was subsequently told by the Panel that it would consider my June 15, 2015 letter as well as the affidavit of Mark Greany, Esq. as part of its deliberations, the grievance decisions mention only the Grievance Complaint, so it is not clear whether those items were considered or forwarded to the Statewide Grievance Committee as part of the record for the Koskoff and Nastri decisions.

Therefore, I request that all five grievances either be sent to a new panel for a new review, or, if reviewed by the entire Statewide Grievance Committee or a reviewing committee, that my four requests from my June 15, 2015 letter be granted prior to the issuance of any decision on these five grievances.

THE COMPLAINANTS,

LAW OFFICES OF HOWARD ALTSCHULER
Howard Altschuler, Esq.
cc: Anthony Nuzzo, Steven Kulas via email

1


11. Sign and date this complaint below. Please use *blue ink*.

Signed under penalties of false statement,

Signature of Complainant

Cathy D'Attilo indv./ppa Danny

Domenic D'Attilo indv./ppa Danny

Date signed

February 17, 2015

Be sure to read paragraph 11 of the Instructions before copying and filing your complaint.

NUZZO & ROBERTS, L.L.C.
L A W O F F I C E S

ANTHONY NUZZO, JR.
RICHARD A. ROBERTS
DAVID J. WEIL
JANE S. BIETZ
ROBERT J. CHOMIAK, JR.
NICOLE C. CHOMIAK
JANE M. CARLOZZI
MICHELE C. CAMEROTA
JENNIFER CAVALIER MOZZER
AMBER J. HINES
NADINE M. PARE
KEVIN C. HINES*
JASON K. MATTHEWS
JAMES R. FIORE
KRISTIN K. MULLINS
KELLY B. GAERTNER**
JAMES P. HENKE
LAURA M. KRITZMAN
SEAN E. BOYD
REGINA P. ARMON

July 22, 2015

VIA ELECTRONIC MAIL
Michael P. Bowler, Esquire
Statewide Bar Counsel
Statewide Grievance Committee
287 East Main Street, 2nd Floor, Suite Two
East Hartford, CT 06118-1885

VIA ELECTRONIC MAIL
Suzanne B. Sutton, Esquire
Chief Disciplinary Counsel's Office
First Assistant Chief Disciplinary Counsel
100 Washington Street
Hartford, CT 06106

RE: D'Attilo v. Nastri; Grievance Complaint #15-0137
D'Attilo v. Horwitz; Grievance Complaint #15-0138
D'Attilo v. Bloss; Grievance Complaint #15-0139
D'Attilo v. Koskoff; Grievance Complaint #15-0140
D'Attilo v. Lichtenstein; Grievance Complaint #15-0141

Dear Attorney Bowler and Attorney Sutton:

We received Attorney Altschuler's letter dated July 21, 2015. Regardless of Attorney Altschuler's multiple complaints regarding the local panel's decision, the panel's dismissal of the complaints against Attorney Joel Lichtenstein, Attorney James Horwitz and Attorney William Bloss is final and not subject to review. Practice Book §2-32(i); Statewide Grievance Committee Rules of Procedure, Rule 6 ("Under no circumstances shall the Committee review the grievance panel's decision that a crime was not alleged in the complaint.").[1]

Furthermore, the provision of § 2-32(i) related to criminal conduct raised by Attorney Altschuler is not applicable here. It is limited to those situations where the local panel has found no probable cause, and the complaint alleges that "**the respondent committed a crime."** Here, as it relates to Attorney Lichtenstein, Attorney Horwitz and Attorney Bloss, there are no allegations that any of these Respondents have committed a crime. In fact, in the 371 paragraph complaint, there are very few allegations regarding these Respondents at all. For example, the only allegations related to Attorney Lichtenstein concern a March 21, 2003 meeting during which the Complainants signed the retainer agreement entitling the Koskoff firm to a 28% fee if the statute was amended to specifically allow for the waiver of the statutory fee scale. (Compl. ¶¶ 19, 20, 25)

Although the Complainants conclude that "the Koskoff firm" converted funds when it took its fee pursuant to the fee agreement, there are no allegations of specific conduct by these Respondents

[1] It is clear that Rule 6 was written so that the local panel, and not the complainant, determines whether the allegations in the complaint set forth a factual and legal basis for criminal conduct. It is obvious in this case that the local panel determined that no criminal conduct was alleged, which decision is not subject to further review as to Attorney Lichtenstein, Attorney Horwitz and Attorney Bloss.

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* Admitted in Massachusetts
** Admitted in New York

giving rise to an ethical violation or any criminal conduct. The panel dismissed the complaint in its entirety with a finding that there was no probable cause as to any of the 17 ethical rules cited by the Complainants, including 8.4 (Misconduct). Implicit in the local panel's decision, therefore, is that it determined that the allegations in the complaint do not set forth criminal conduct, and its decision is final and not reviewable. Practice Book §2-32(i); Statewide Grievance Committee Rules of Procedure, Rule 6. What the Complainants' counsel appears to have missed is that the local panel and not the lawyer advocate determines whether a crime was alleged in the complaint. To do otherwise would mean that every complainant could simply allege that a lawyer committed a crime, nullifying any review and determination by the local panel. In this case, other than the hyperbole by the Complainants' counsel, it is apparent that no criminal conduct was alleged as to Attorney Lichtenstein, Attorney Horwitz and Attorney Bloss that would be subject to further review.

Moreover, despite the rhetoric and highly inflammatory language used in the complaint, this is not a defalcation matter but a fee dispute involving what the fee agreement was between the law firm and its clients. If being paid fees pursuant to a fee agreement, which a client later takes issue with is an allegation of a crime, then every fee dispute case would fall under this rule and be referred to the reviewing committee. This is not the purpose of this rule.

Also, as to Attorney Altschuler's ongoing efforts to misuse the grievance process for purposes not intended by the rules, we do have a concern that his letters and other documents filed with the local panel and now the Statewide Bar Counsel have become part of the record which would be improper. At some point we would appreciate that the Statewide Grievance Committee confirm the specific documents that make up the record for these grievance complaints.

Very truly yours,

NUZZO & ROBERTS, L.L.C.

Anthony Nuzzo, Jr.

ANJ/eam

cc: Howard Altschuler, Esq. (via electronic mail)
Steven Kulas, Esq. (via electronic mail)

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STATE OF CONNECTICUT
JUDICIAL BRANCH

STATEWIDE GRIEVANCE COMMITTEE
Michael P. Bowler, *Statewide Bar Counsel*

287 Main Street
Second Floor – Suite Two
East Hartford, CT 06118-1885
(860) 568-5157 Fax (860) 568-4953
Judicial Branch Website: www.jud.ct.gov

July 23, 2015

Attorney Howard Altschuler
21 Perkins Road
Bethany, CT 06524

Re: Grievance Complaint #15-0137, D'Attilo v. Nastri
Grievance Complaint #15-0138, D'Attilo v. Horwitz
Grievance Complaint #15-0139, D'Attilo v. Bloss
Grievance Complaint #15-0140, D'Attilo v. Koskoff
Grievance Complaint #15-0141, D'Attilo v. Lichtenstein

Dear Attorney Altschuler:

We acknowledge receipt of your letter dated July 21, 2015 regarding the above referenced grievance complaints. Your letter requests several areas of relief, none of which are available from the Statewide Grievance Committee.

You request that the Statewide Grievance Committee review the decisions to dismiss the Bloss, Horwitz, and Lichtenstein complaints because you claim the Fairfield Judicial District Grievance Panel improperly dismissed them in violation of Connecticut Practice Book §2-32(b)(i)(2). That rule prevents a grievance panel from dismissing a complaint "in which there is an allegation in the complaint that the respondent committed a crime, ..." In such cases, a grievance panel's determination that there is no probable cause of misconduct shall be reviewed by the Statewide Grievance Committee in accordance with Connecticut Practice Book §2-35(c). Please note, however, whether the complaint alleges a crime is a decision for the grievance panel to decide, not the Statewide Grievance. The Statewide Grievance Committee will only review the panel's decision if the panel determines that a crime was alleged. See Rule 6D of the Statewide Grievance Committee Rules of Procedures ("under no circumstances, shall the Committee review the grievance panel's decision that a crime was not alleged in the complaint."). Accordingly, since the panel did not find that a crime was alleged and dismissed the complaint, the complaint is not subject to review by the Committee.

You also claim that you are unaware whether a letter dated June 15, 2015 and an affidavit of Attorney Mark Greaney were considered by the panel or sent with the panel's record to the Statewide Grievance Committee. Please note that both the letter and affidavit are in the panel record filed with the Statewide Grievance Committee. The extent to which the panel considered the letter and affidavit is a question best addressed to the panel through Attorney Kulas.

Finally, you request that "all five grievances . . . be sent to a new panel for a new review . . .." Please be advised there is no rule that provides this relief, so it is denied. The Committee will schedule a public hearing on the Nastri and Koskoff complaints. The Bloss, Horwitz, and Lichtenstein decisions are final and not subject to any further review.

Very truly yours,

Michael P. Bowler

MPB/jf

Cc: Attorney Steven Kulas
Attorney Anthony Nuzzo, Jr.
Attorney Suzanne B. Sutton

Law Offices of Howard Altschuler

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ADMITTED:

STATE COURTS:
CT, NJ, NY, PA

FEDERAL APPELLATE COURTS:
UNITED STATES SUPREME COURT
2ND CIR. CT. OF APPEALS
3RD CIR. CT. OF APPEALS
9TH CIR. CT. OF APPEALS

FEDERAL TRIAL COURTS:
SOUTHERN DISTRICT OF NEW YORK
EASTERN DISTRICT OF NEW YORK
DISTRICT OF CONNECTICUT
DISTRICT OF NEW JERSEY

FEDERAL BANKRUPTCY COURTS:
DISTRICT OF CONNECTICUT
SOUTHERN DISTRICT OF NEW YORK

New York Office:
281 Garth Rd.
Building C- 3D
Scarsdale, NY 10583
Please Reply to Bethany Office

July 24, 2015

Eugene J. Riccio, Esq., *Grievance Counsel*
Stamford/Norwalk Judicial District Grievance Panel
350 Fairfield Avenue
P.O. Box 9118, Suite 703
Bridgeport, CT 06604
Phone: 203-367-7440
VIA FEDEX (Tracking # 774133155369) TO ATTORNEY RICCIO AND EMAIL TO
cc: Suzzane Sutton, Esq. Michael Bowler, Esq. Mark Dubois, Esq.

RE: Grievance Complaints #15-0142, 15-1043

Dear Attorney Riccio,

As per phone conversation this afternoon, I enclose an original and six copies of my reply along with the annexed exhibits for delivery Monday morning. Please let me know if you have any questions.

Respectfully submitted,

ON BEHALF OF THE COMPLAINANTS,
LAW OFFICES OF HOWARD ALTSCHULER
Howard Altschuler, Esq.

D'ATTILOS' REPLY RE: GRIEVANCE COMPLAINTS 15-0142, 15-0143

The issue for this Panel is whether there is probable cause that the respondents engaged in attorney misconduct. "[P]robable cause requires only a probability or substantial chance… innocent behavior frequently will provide the basis for a showing of probable cause... the relevant inquiry is not whether particular conduct is innocent or guilty, but the degree of suspicion that attaches to particular types of noncriminal acts." *State v. Buddhu*, 264 Conn. 449, 462-63 (2003) (citation omitted)

This Panel's decision should not be based upon demonstrably false statements, or conclusory remarks that have no documentary source. In the 5 pages I have been allotted, I can only address a small fraction of the multiple misrepresentations of fact in the Respondents' 24 page submission. Given the public and bar interest in this grievance, and the broader impact this Panel's decision is going to have on what is ethically acceptable in Connecticut, **I respectfully request that this Panel hold a hearing prior to a decision**. See Grievance FAQ #3. In addition, the D'Attilos were required to file their complaint under penalty of perjury. **I respectfully request that this Panel require the respondents confirm their reply assertions under penalty of perjury, prior to the Panel rendering a decision.**

As I mentioned in my June 12, 2015 letter (which I hereby incorporate by reference and include as an exhibit, pages E:47-53) there is documentary evidence that the respondents' primary defense to the conspiracy to misappropriate millions of dollars -- that Mr. Gallant and Ms. Iannantuoni never actually read the March 21, 2003 retainer agreement -- is demonstrably false. See E:48-50. This reply will focus on only a small portion of other demonstrable misrepresentations not mentioned in my June 12 letter.

Regarding Ms. Iannantuoni, though respondents strenuously deny that she was present at the February 29, 2012 meeting (R2, n2), **she drafted the memo summarizing what happened at that meeting**. E:1. This significant discrepancy between what the respondents claim and what the documents show is yet another reason why the Panel should permit a hearing and require that the respondents submit a certification subject to penalties of perjury. Respondents admit that "Ms. Iannantuoni worked collaboratively" with Mr. Gallant on the case." R2. She was involved in the creation of the Settlement Statement, which means she reviewed the 2003 Koskoff retainer agreement which was part of the Settlement Statement paper file with handwritten comments. See E:49. Other work she did is listed in the billing statements (though there are no time records for trustee work from May 2012 to August 2013 for either respondent). At the time of the events, Ms. Iannantuoni had been an attorney for 12 years. Whether Gallant was supervising her or not, she had an independent responsibility to the D'Attilos, to adhere to the Rules of Professional Conduct, and to report RPC 8.3 misconduct of other attorneys.

The respondents claim they were retained to perform a wide range of legal tasks such as: determining whether to structure the settlement and the appropriate allocation of the proceeds, developing an investment strategy (R13), seeking court approval of the settlement agreement, establishing a special needs trust, (R1), working with an architect to assess feasibility of properties, real estate "counseling", developing plans for construction (R19), providing income tax advice (R13, n.11), drafting a Settlement Statement and Application to Compromise, selecting and monitoring an investment advisor, (R14), helping with a loan repayment, budgeting, and more. (R13). Though these tasks are not mentioned in the retainer agreement, respondents claim:

> "**Mr. Gallant and Ms. Iannantuoni** never undertook to–and did not–review the terms of the settlement, including the contingency fee to which the D'Attilo's had agreed prior to their involvement. They had no duty to do so and **were not qualified to do so in any event**." (R24)

Though respondents claim they are qualified to provide services ranging from investment advice to construction advice, the respondents literally claim they were **not qualified** to read the 1¼ page 2003 retainer agreement or to read the medical malpractice settlement agreement and that they had no duty to do so (though they were involved in every other conceivable aspect of the guardianship proceedings, with Gallant charging $550 per hour and Iannantuoni charging $350 per hour). How were they going to provide settlement advice without reading the settlement agreement? Apparently the *only* legal work outside the scope of the Day Pitney retainer agreement was reading the three documents Mr. Gallant received on February 15, the same documents that he requested.

Respondents' claim they were not qualified to review a settlement agreement or a retainer agreement is preposterous. The respondents are lying because they know there is proof they read the agreement (see my June 12 letter, E:48-50) and they know that it was their obligation to immediately alert their clients that KKB was attempting to deduct $4.3 million more than KKB was then entitled to deduct. As to the settlement agreement, although that was integral to their work (what ethical attorney would actively seek to get court approval of an agreement that the attorney did not read?), as it turns out, respondents had a completely different agenda than assisting the D'Attilos in the settlement. See below.

Although the word "lie" is a strong one when referring to an attorney, it is used with justification in this case because that is exactly what respondents are doing about multiple issues. The respondents' demonstrable misrepresentations to this Panel separately merit a finding that engaged in misconduct.

For another example, one of the linchpins of respondents' defense is that they drafted a "special needs trust" and that Judge DePanfilis "generally exercises considerably closer supervision over **special needs trust** expenditures than Probate Judges in some other Courts." R.9. (*All emphases in quotes is added*). They use this special needs trust claim to justify the "advice" they gave to the D'Attilos to move out of Norwalk. Gallant also confirms that he told the D'Attilos "that once the Norwalk Court had jurisdiction, it would be unlikely to approve the Trust's transfer to another Probate Court." R.10. Complaint ¶113. As with most of their contentions, respondents provide no independent evidence of these claims.

Respondents repeatedly claim that they created a special needs trust. *See, e.g.*, R. 2, 5, 6, 7, 9, 10, 14, 15, 16, 17, 18, 20, 23. That is what the respondents told the D'Atillos in 2012 and that is what the respondents are telling this Panel in 2015. However, the respondents were lying to the D'Attilos when they said it in 2012 and they are lying to this Panel when they say it in 2015. I enclose a copy of an opinion letter from Donna Levine Esq., a Connecticut attorney who has created hundreds of special needs trusts. E:6-8. She confirms that the respondents' representation is false. She writes: "The trust created for Daniel by Attorney Gallant is not a special needs trust" and she explains the basis of her opinion. I also enclose a complete copy of the trust drafted by the respondents. E:8-24. If anyone on the Panel is familiar with trusts, you will be able to see it is not a special needs trust, but a boilerplate.

While the full implications of this cannot be addressed in the 5 pages that I have been given to reply (which is one of the reasons I am requesting a hearing before the Panel so the panel can get all the facts), as a result of the respondents' misrepresentation to the D'Attilos as to the nature of the trust, resulting in their agreeing to let Gallant be the trustee (without signing a waiver similar to the one that they signed for their will, R.Ex. 6), respondents' firm would have collected approximately $1.5 million in trust fees alone (perhaps more depending on the rate of return) over the nearly thirty years that this trust would likely have been in effect.

That the respondents have handled 100 "substantial" trusts, many of which respondents characterize as "special needs" (R8) means that the respondents likely misrepresented the nature of the trusts they created for these other clients as well just as they are misrepresenting it to this Panel. As it turns out, recent events in the Norwalk Probate Court prove beyond any doubt that the trust set up by respondents was not only unnecessary, it was antithetical to the D'Attilos' interests. That also means that none of the trustee fees charged to Danny were legitimate (whether within their fee schedule or not) because Danny did not need the respondents to be the trustees. Respondents never advised Danny's parents of this.

Over the past 10 months or so, I have worked with the D'Atillos and well-respected trust attorneys to mitigate the serious damages created by the respondents (and KKB). Why has it taken so long? Before anything could be done, the D'Attilos needed to be reappointed as guardians of the estate. Why? Only because the respondents terminated their guardianship without their permission. The respondents' claim that the "the termination of the guardianship estate had no impact on the D'Attilos' rights regarding the Trust" (R18) turns out to be another falsehood. It took approximately seven months just to get the guardianship reinstated. If Gallant had been trustee during those seven months, his firm would have collected approximately $40,000 in trustee fees during the delay of reinstatement, which may explain in part why he had the probate court terminate the guardianship. Their ability to terminate the trust at any time (that is, fire Gallant) is the only reason the D'Attilos agreed to have Gallant as the trustee, and he effectively took this right away without their permission or knowledge.

Contrary to the respondents' claim, the guardianship reinstatement did not cause any confusion, expenses (except the legal fees to reinstate), or extra obligations. R18. **Once the guardianship was reinstated, it took approximately only *two weeks* to revoke the old trust and replace it with a new trust**. The new trust addresses the D'Attilos' concerns that were totally ignored by the respondents. See E25-37. Cathy and Domenic were appointed as sole trustees. This means that after more than three years of paying Gallant and his replacement trustee about $250,000 in trustee fees, Danny will no longer have to pay a penny to the lawyers who served as trustees but accomplished nothing for Danny or his trust (except reduce it by about $250,000, plus lost interest). In other words, the recent appointment of Cathy and Domenic as trustees proves that there was *never any reason* for Brad Gallant or any other lawyer to be a trustee. All the money the trust paid to the lawyer-trustees was a total waste, an unethical scam. (The trust funds investments were professionally managed by TIAA-CREF, and then, Wells Fargo.)

Similarly, every negative thing respondents say about Judge DePanfilis and Colleen Fries is unsubstantiated. Despite the fact that one respondent is a past president of the Connecticut Bar Association who is being represented by the current president of the Connecticut Bar, they could not find a single attorney in the state of Connecticut to confirm any of the claims that they are making about Judge DePanfilis or Colleen Fries. They do not cite a single news article, blog post, or a shred of evidence where anyone has ever even hinted they had to move out of Norwalk to avoid DePanfilis or Fries for any reason, special needs or otherwise. As Attorney Levine points out, she is not aware of any probate court in Connecticut that would need to be avoided based on a concern of how a "trust would be treated by a particular judge… I would not counsel a client to file in a particular Court based on the reputation of the current judge." E:7.

Despite that, the respondents claim that they advised the D'Attilos to get out of Norwalk to get "maximum flexibility in managing their child's affairs." R10. But that is not what respondents *sought* once they were in Northern Fairfield, let alone obtain. The respondents' unsubstantiated claims as to what they accomplished by the move from Norwalk to Bethel (such as getting more discretion for the parents and a better allocation) are false. In other words, they never asked for what they knew the D'Attilos wanted. R15. This is also a violation of the RPC.

However, as soon as the D'Attilos were reappointed as guardians of the estate, the D'Attilos asked the Probate Court in April 2015 for what they wanted, **and their request was granted by the very same judge that the respondents appeared before in 2012**. As of April 2015, the D'Attilos are sole trustees, no longer have to pay a lawyer/trustee a penny for services, have sole discretion as to spending money under the terms of the trust, do not have a restrictive budget (such as having to ask the judge if they can buy a puppy for Danny as they had to ask Brad Gallant), and have assured the safety of Danny, their family, and their future, exactly what the respondents failed to do even though they deducted about $160,000 from the trust. The D'Attilos now have an annual overall budget, not a monthly restricted one, a budget far in excess of the budget obtained by the respondents and one that is in keeping with the professional report prepared for trial rather than Gallant's self-serving budget to preserve the corpus of the trust to artificially increase his legal fees. Judge Egan also approved a separate account from which the D'Attilos have full discretion in directing the construction of a home that has been specially designed to accommodate Danny's needs for the rest of his life, even if his parents predecease him.

In fact, everything that we obtained for the D'Attilos in April 2015 in the course of two weeks after the guardianship was reinstated, would have been obtained on February 29, 2012 before Judge DePanfilis (who respondents describe as "accommodating and considerate" R10), as well as before Judge Egan (who also has a reputation for fairness and compassion) because it is clearly in Danny's best interests. The only reason the D'Attilos didn't get in 2012 what we were able to get in 2015 is because **the respondents never submitted a petition asking for it**. Respondents failed to seek the legitimate objectives of the D'Attilos. Such a petition was never submitted because the respondents were looking out for their own selfish interests rather than the D'Attilos' interests.

As noted, I enclose a copy of the new 2015 trust to illustrate the significant difference between the woefully inadequate one drafted by respondents and the one that is now in place. For just one example, the new trust specifies that any current or future trustee needs to abide by certain guidelines when it comes to the care of Danny and makes it clear that "another essential purpose of this trust is to ensure that the beneficiary may reside for his entire lifetime in the family home. The beneficiary should never be placed in a long-term care facility unless it is medically necessary." E:27-28. Had the parents passed away while Gallant was the trustee, he would have had sole control over all of the money, including whether to spend money on keeping Danny at home and how much to spend. Now control is back where it belongs: with Danny's parents and designated successors who truly have Danny's best interest in mind rather than respondents who only saw Danny as a trustee fee generation machine.

All this and more is relevant because this illustrates a significant conflict of interest: between respondents' selfish interest to generate unnecessary trust and legal fees for themselves, even at the unethical cost of ignoring the needs and explicit wishes of the clients. However, from a monetary perspective, all of this pales in comparison with the unethical lawyering related to the allocation of the settlement. The respondents seem to be proud of the fact they got the D'Attilos a "substantial (25%) portion". R20. Actually, that allocation may be one of the most financially harmful things that the respondents did to the D'Attilos, while, at the same time, the most financially beneficial to the respondents.

Because Danny received 75% (almost $13 million, R38), respondents set up a situation where, if Danny predeceases his parents, millions of dollars will have to be paid in estate taxes that otherwise would not have had to have been paid if there had been a proper allocation. If respondents had read the settlement agreement they would have discovered that the agreement applied equally to the D'Attilos, with no allocation specified. An even allocation would have resulted in approximately $5.5 million each

(assuming the same misappropriation of legal fees), and virtually no estate tax consequences. This meant that respondents overfunded Danny's trust by about $8 million. Since that money would have grown every year, and Day Pitney was going to get .5% every year, that overfunding represented at least a minimum of $40,000 trust fees year in and year out, probably for decades to come. If Cathy and Domenic predeceased Danny, then the Foundation Gallant created might have continued to receive legal fees or trustee fees "forever." G:159.

Literally nothing that the respondents did was in the interest of the D'Attilos, and everything was in the interest of Day Pitney and the respondents. Of course, respondents never told the D'Attilos about any of this including the fact that the pseudo-allocation created a substantial and unnecessary multi-million-dollar estate tax liability even though the amount of money in Danny's trust was far in excess of what he needed for his entire lifetime as determined at trial.

In fact the only thing the respondents accomplished by getting the D'Attilos to move from Norwalk to Bethel was to help KKB get rid of Colleen Fries prior to the February 29, 2012 hearing before Judge DePanfilis, the only other person in the probate process who had the KKB 2003 retainer agreement in her hand. Though the respondents could have submitted the 2003 retainer agreement to Judge Egan, they failed to do so. Respondents also created what has been a living nightmare for the clients who, among other things, will still not be able to move into their own home until about June 2016.

Because of 5 page limit there are multiple significant issues that I have been unable to address including but not limited to: respondents' qualifications for charging legal fees to provide investment advice, the failure to obtain confirmation of the $632,000 + in KKB's alleged legal costs, Gallant's false claim that he considered any expenditures improper at the time he was the trustee (E:39-43), respondents' knowledge of the Bethel move (R44), the affidavit of the real estate agent that the respondents did veto Shelton and other places (G:37-43), the failure to consider the foreclosure in estate planning (E:45-46), the negative tax impact of the stipend, other conflicts of interest issues, churning of fees[1], the Connecticut Supreme Court's holding that issues such as negligence are *not* precluded by a probate court approval of an accounting (*Gaynor v. Payne*, 261 Conn. 585, 598 (2002)), *and many others.*

For all the reasons set forth in the grievance complaint, the accompanying exhibits, my June 12, 2015 letter, this limited reply and the annexed exhibits, the respectfully request the Panel schedule a hearing prior to decision, and require that the respondents confirm the factual accuracy of their grievance papers under penalty of perjury and, based on all the above, find that there is probable cause of serious professional misconduct.

Respectfully submitted,

Howard Altschuler

[1] For example, according to respondents, in March 2012 they "especially" worked on the budget (R13-14). The problem is: KKB had paid an expert $68,712.92 to develop a budget for Danny and present that to the jury, which awarded all the economic damages and expected costs sought, a total of $8,619,989.13. E:2-4. The respondents had a copy of the report. E:5. Why did they need to work on a budget that already existed? It is yet another example of the respondents churning legal fees, such as their churning $16,000 to "advise" the D'Attilos regarding the purchase of a $229,000 lot, churning $10,000 for boiler plate "stop gap" will related documents, and churning .5% trustee fees that were never needed.

DAY PITNEY LLP

INTRA-OFFICE MEMORANDUM

TO: File/D'Attilo

FROM: Rebecca A. Iannantuoni

DATE: February 29, 2012 **CLIENT-MATTER NO.:** 709718.000000

RE: Office conference with Kathleen, Domenic, Cathy, Jim, Brad Gallant

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For Cathy and Don to address A.S.A.P.

BoE

Registrar of Vote

Insurance

Registration of car/DMV

Telephone electrical cable etc.

Post office - change of address

Department of Developmental Disabilities

Call Northern Fairfield for forms

Long discussion about structures; $3,000,000 from age 21 for life, monthly, 30 year guarantee loan proceeds issue discussed.

Domenic wants 25% of settlement; need to work on budget.

lm

Law Office of Donna R. Levine
23 LeGrand Road
North Haven, Connecticut 06473

Donna R. Levine

Telephone: (203) 985-9033
Facsimile: (203) 985-1574
E-Mail: sdsij@aol.com

July 7, 2015

Attorney Howard Altschuler
21 Perkins Road
Bethany, CT 06524

Re: The Daniel Jacob D'Attilo Trust

Dear Attorney Altschuler:

You asked me to provide an opinion as to whether The Daniel Jacob D'Attilo Trust, established on April 24, 2012, with Keith Bradoc Gallant as initial Trustee, and funded with assets belonging to Danny D'Attilo's Guardianship Estate, is a "special needs trust". Since becoming an attorney in 1989, I have had a special interest in planning for people with disabilities, based in part on my own experience having had a child with disabilities, now deceased, and my husband's decades of work as an employee of the State of Connecticut's Department of Developmental Services. In the years since I started my own practice, I have counseled hundreds of families who have children with special needs and drafted as many special needs trusts.

A special needs trust, sometimes called a "supplemental needs trust", is commonly created to enable a person with a physical or mental disability to have assets held in trust for his or her benefit and not have those assets treated as countable for purposes of qualification for certain government benefit programs. There are two main categories of special needs trusts, those created by a third party for the benefit of the person with disabilities (a "third party" trust), and those created with funds belonging to the person with disabilities himself, as they were in this case (a "first party" trust).

The key element of *any* special needs trust is that it must provide only for extra items or services not being provided or paid for by public benefit programs. The rules governing first party special needs trusts are further set forth in 42 U.S.C. Section 1396p(d)(4), as well as in Connecticut law. Connecticut practice includes having an attorney for the Department of Social Services and the Department of Administrative Services (through the State of Connecticut Attorney General's office) review any first party trust and receive notices of any Probate Court hearings related thereto. Although the Probate Court has maintained jurisdiction of the Trust in question, the State declined to be involved in the matter because the trust being created was not a special needs trust and Danny receives no government benefits.

The trust created for Daniel by Attorney Gallant is not a special needs trust. It is an entirely discretionary trust to age eighteen (retaining the parents' support obligation mandated by law) and then becomes a discretionary support trust, in that it provides for Danny's "health and reasonable comfort...and support.." at the discretion of the Trustee. No needs based government programs are available to Danny while a trust exists to provide for his needs. Although the Trust prepared by Attorney Gallant for the benefit of Daniel D'Attilo contains language allowing the guardians, conservators or parents to apply to the Probate Court to amend the trust in a manner that would convert it to a special needs trust, the trust as it was written does not contain any language by virtue of which it would be considered a special needs trust.

As to your further question as to whether certain Courts treat special needs trusts more harshly than others, in my experience I have seen a general acceptance of these trusts and a liberal interpretation based on the best interests of the person with disabilities. There is no particular Probate Court that I would avoid due to concerns about whether or how the trust would be treated by a particular judge. In any event, the probate judges are elected officials and change from time to time, with a mandatory retirement age of 70. Recently the Courts were required to merge and many smaller Courts were eliminated. I would not counsel a client to file in a particular Court based on the reputation of the current judge.

Very truly yours,

Donna R. Levine

Law Office of Donna R. Levine
23 LeGrand Road
North Haven, Connecticut 06473

Donna R. Levine

Telephone: (203) 985-9033
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E-Mail: sdsij@aol.com

DONNA R. LEVINE practices in the fields of estate planning and probate. Her practice emphasizes elder law issues and issues regarding persons with disabilities, including powers of attorney, living wills, wills and trusts, conservatorships, eligibility for Title 19, nursing home and assisted living admission, and planning for children with disabilities.

Attorney Levine was an estate administrator with the law firm of Bergman, Horowitz & Reynolds (now Withers Bergman) from 1976 to 1984. She has been in solo practice since 1990. Attorney Levine received her undergraduate degree from New York University in 1970, with honors in economics. She received a M.S. in Taxation degree from the University of New Haven in 1986 and received her J.D. from the University of Connecticut School of Law, cum laude, in 1989.

Attorney Levine is a member of the Connecticut and New Haven County Bar Associations. She is a member of the Elder Law Section of the Connecticut Bar Association, and a member of the National Academy of Elder Law Attorneys and the Connecticut Chapter of NAELA. She serves on the Board of Directors of the South Central Connecticut Chapter of the Area Agency on Aging, HART United, Inc., and Congregation Beth El-Keser Israel and serves on the Commission on Aging for the Town of North Haven. She has given numerous talks to community groups and other organizations. Attorney Levine lives and practices law in North Haven, Connecticut.

Howard Altschuler

From: Howard Altschuler <legalmalpractice@gmail.com>
Sent: Monday, July 27, 2015 4:14 PM
To: 'Bowler, Michael'
Cc: 'anuzzo@nuzzo-roberts.com'; 'Kulas, Stephen'
Subject: RE: 2015-07-20-02 to Statewide Grievance Committee.pdf

Sensitivity: Confidential

Dear Attorney Bowler:

I request clarification of your July 23, 2015 letter.

As you know, Practice Book §2-32(i)(2) does not have any provision granting a local panel discretion over determining whether a complaint includes an allegation of criminal conduct. Similarly, the rules posted online (JDP-GC-8) entitled: "Attorney Grievance Procedures in Connecticut Your Rights as a Complainant in the Grievance Process" mirrors the Practice Book. See jud.ct.gov/publications/gc008.pdf. The full text of the Committee's internal rule that you cite states as follows (emphasis added):

> D. If a grievance panel determines that no probable cause exists that an attorney is guilty of misconduct, but the complaint contains an allegation that the attorney committed a crime, said case **shall** be reviewed by a reviewing committee for appropriate action, or by the Committee if deemed appropriate. Under no circumstances shall the Committee review the grievance panel's **decision** that a crime was not alleged in the complaint.

That limitation in yellow is not found in the Practice Book, or JDP-GC-8. Please explain by what authority the Grievance Committee is empowered to change the explicit requirements of the Practice Book. If there is no such authority, then the Rule is invalid.

Secondly, assuming for the moment that the Committee has the authority to alter the requirements of the Practice Book, Procedural Rule 6 is not properly applied in this case. According to Rule 6, the grievance panel has to issue a "**decision** that a crime was not alleged in the complaint." There is no such decision or finding in any of the Panel's five decisions.

Either Rule 6(D) is invalid because it is contrary to the Practice Book, or it is not applicable since the Panel did not issue any decision that a crime was not alleged in the complaint. In either circumstance, the Panel is obligated to refer the Horwitz, Lichtenstein, and Bloss decisions to the Statewide Grievance Committee.

As I wrote in my July 20 letter I will be following up with some more detailed serious concerns regarding the specific decisions that contain factual findings that support my clients' grievances, but cites RPC provisions that are not related to the factual findings.

Sincerely yours,

Howard Altschuler

From: Bowler, Michael <Michael.Bowler@jud.ct.gov>
Sent: Monday, July 27, 2015 4:22 PM
To: Howard Altschuler
Cc: anuzzo@nuzzo-roberts.com; Kulas, Stephen
Subject: RE: 2015-07-20-02 to Statewide Grievance Committee.pdf

Sensitivity: Confidential

The Statewide Grievance Committee may adopt any rule of procedure that is not inconsistent with Practice Book rules. See Practice Book §2-33(c)(2). Rule 6D is not inconsistent with Practice Book §2-32(i), or any other section.

Michael P. Bowler
Statewide Bar Counsel
Statewide Grievance Committee
287 Main Street, Second Floor, Suite Two
East Hartford, CT 06118-1885
Tel: (860) 568-5157 (X. 3362)
Direct Dial: (860) 290-3362
Fax: (860) 568-4953
Michael.Bowler@jud.ct.gov

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Sincerely yours,

Howard Altschuler

Confidential Email

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Howard Altschuler

From:	Howard Altschuler <legalmalpractice@gmail.com>
Sent:	Monday, July 27, 2015 4:53 PM
To:	'Bowler, Michael'
Cc:	'anuzzo@nuzzo-roberts.com'; 'Kulas, Stephen'
Subject:	RE: 2015-07-20-02 to Statewide Grievance Committee.pdf
Sensitivity:	Confidential

Tracking:

Recipient	Read
'Bowler, Michael'	
'anuzzo@nuzzo-roberts.com'	
'Kulas, Stephen'	Read: 7/29/2015 10:22 AM

Hi Attorney Bowler,

Putting aside for the moment that a rule mandating referral without exception (PB 2.32(i)(2) is inconsistent with a rule that carves out an exception that does not require referral (R.6(D)), you did not address my second question: Rule 6(D) itself requires a decision from the panel that the complaint does not include an allegation of a criminal act. There is no mention of this issue in any of the grievance decisions. Therefore the panel could not have decided that the complaint did not allege a criminal act and, thus, pursuant to R6(D), referral is required. I would appreciate your response.

Sincerely yours,

Howard Altschuler

(dictated with voice recognition software, not proofread)
Confidential Email
This email message contains confidential information and is intended only for the individual named. If you are not the named email recipient, you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. E-mail transmission cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The sender therefore does not accept liability for any errors or omissions in the contents of this message, which arise as a result of e-mail transmission.

From: Bowler, Michael [mailto:Michael.Bowler@jud.ct.gov]
Sent: Monday, July 27, 2015 4:22 PM
To: Howard Altschuler <legalmalpractice@gmail.com>
Cc: anuzzo@nuzzo-roberts.com; Kulas, Stephen <Steven.Kulas@jud.ct.gov>
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The Statewide Grievance Committee may adopt any rule of procedure that is not inconsistent with Practice Book rules. See Practice Book §2-33(c)(2). Rule 6D is not inconsistent with Practice Book §2-32(i), or any other section.

Howard Altschuler

From: Bowler, Michael <Michael.Bowler@jud.ct.gov>
Sent: Monday, July 27, 2015 4:56 PM
To: Howard Altschuler
Cc: anuzzo@nuzzo-roberts.com; Kulas, Stephen
Subject: RE: 2015-07-20-02 to Statewide Grievance Committee.pdf

Sensitivity: Confidential

I disagree with you regarding what is consistent and inconsistent here. To address your other point, it is reasonable to infer from the grievance panel's dismissal that the panel determined that a crime was not alleged, otherwise the panel would not have dismissed the complaint.

Michael P. Bowler
Statewide Bar Counsel
Statewide Grievance Committee
287 Main Street, Second Floor, Suite Two
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Tel: (860) 568-5157 (X. 3362)
Direct Dial: (860) 290-3362
Fax: (860) 568-4953
Michael.Bowler@jud.ct.gov

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Sincerely yours,

Howard Altschuler

(dictated with voice recognition software, not proofread)

Law Offices of Howard Altschuler

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Email: legalmalpractice@gmail.com

ADMITTED:

STATE COURTS:
CT, NJ, NY, PA

FEDERAL APPELLATE COURTS:
UNITED STATES SUPREME COURT
2ND CIR. CT. OF APPEALS
3RD CIR. CT. OF APPEALS
9TH CIR. CT. OF APPEALS

FEDERAL TRIAL COURTS:
SOUTHERN DISTRICT OF NEW YORK
EASTERN DISTRICT OF NEW YORK
DISTRICT OF CONNECTICUT
DISTRICT OF NEW JERSEY

FEDERAL BANKRUPTCY COURTS:
DISTRICT OF CONNECTICUT
SOUTHERN DISTRICT OF NEW YORK

New York Office:
281 Garth Rd.
Building C- 3D
Scarsdale, NY 10583
Please Reply to Bethany Office

August 24, 2015

Karyl L. Carrasquilla, Esq.
Assistant Disciplinary Counsel
Office of Chief Disciplinary Counsel
100 Washington Street, Hartford, CT 06106
(860) 706-5055; Fax: (860) 706-5063
Karyl.Carrasquilla@jud.ct.gov

Dear Attorney Carrasquilla:

Thank you very much for taking the time to meet on August 18. I enclose some additional PDF documents primarily related to billing and missing documents. I will also send a follow-up email with some additional information/documents regarding other issues, with a focus on summarizing the evidence showing that the respondents intentionally defrauded the D'Attilos. If there are any other documents you would like to see immediately (such as emails to and from Colleen Fries), please let me know.

KKB BILLING FOR LITIGATION COSTS

One of the things that I noticed soon after being retained is that the litigation expenses for the medical malpractice case were in excess of $632,000. PDF 1. This seemed like a lot given the relatively narrow focus of the medical malpractice case on Danny's healthy condition a few days before his birth and the delivery itself. I wanted to review the underlying billing statements to double check for errors and to see if there were any questionable expenses.

I originally asked for the entire file from KKB on May 13, 2014. I was surprised when I received what was represented to be the entire file later that month (see PDF page 2) but it appeared to include only three actual invoices totaling $5,637.00. (PDF 3-5). This made it impossible for me to double check the accuracy or legitimacy of the more than $600,000 in purported costs.

When I asked for the original invoices, Mr. Nuzzo wrote in December 2014: "**We are uncertain if there are any invoices still in existence related to this matter, and we are verifying that now**." PDF 6. He only turned over a computer printout (which is part of KKB's grievance reply Exhibit 60). He provided no explanation as to why invoices would no longer be in existence.

I heard nothing further on the issue until May 19, 2015, when Mr. Nuzzo turned over a number of documents. PDF 7-8. While I will have to double check, I believe that only four additional original invoices were provided at that time, totaling $1,395.28. PDF 9-12. Thus, I believe I received original invoices totaling $7,032.28 out of a total of the $648,463.73 in litigation expenses listed on the Settlement Statement (PDF 1). That means approximately 99% of the legal costs deducted from the D'Attilos settlement funds are not backed up by actual invoices.

This is a serious matter because even without underlying documentation there are unanswered questions regarding some unexplained discrepancies. For example, Mr. Nuzzo's May 19, 2015 letter (PDF 8) indicates that more than three years after the conclusion of the medical malpractice case, KKB had discovered that it made errors in calculating costs and that the D'Attilos were due $1,659.72. There is mention of a former employee who "mistakenly posted several costs twice." KKB's grievance response does not actually alert the Panel that KKB found this error. See KKB grievance reply, pg. 28. Instead, KKB claimed that it was not required to reconstruct the record. But if it had not done so, the error never would have been found

In any case, there is no explanation in the letter or grievance reply of why it took KKB so long to figure this out, why several double payments to vendors were not noticed at the time of payment, why KKB did not have procedures in place to assure that client funds were properly handled, or why KKB failed to preserve original invoices. There is also no mention of even more significant discrepancies.

For example, in KKB's Exhibit #60 filed with their grievance response, there is a list of payments to experts, the single biggest purported litigation expense. PDF 13-18. That printout from May 2012 indicates the total expert expenses amounted to $379,128.14. PDF 18. While there are more than 30 different experts listed, KKB turned over only one retainer agreement (Wood LLP).

To illustrate the seriousness of the billing for costs problem, consider Lawrence Forman. He was KKB's life care planner expert who calculated how much it would cost to take care of Danny through his expected lifetime. He is also the expert who visited the D'Attilos home in Norwalk and described it as "lovely" during his trial testimony in May 2011. According to his trial testimony, Forman expected his fees in the D'Attilo matter were going to be approximately $23-$25,000. PDF 22-23:

Q Okay. So -- And I'm not going to hold you to an exact number, but if we're looking at this case alone, you're total bill, we're talking once it's finalized, is somewhere around $25,000?

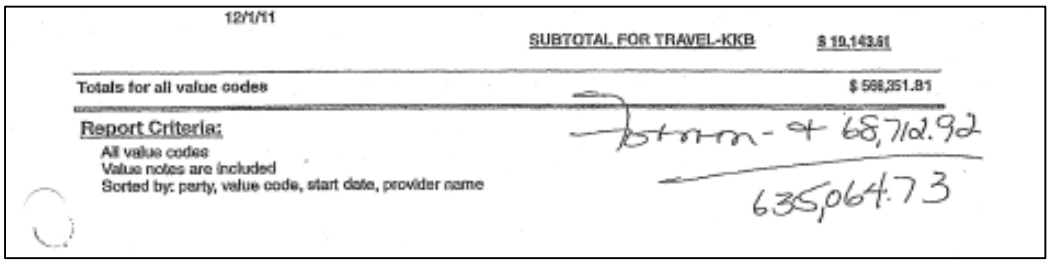
A I'd say 23 to 25, that's about the average.

Q Okay. On average for a case where you testified at deposition and trial. Correct?

11

A Yeah, of this magnitude, sure.

However, the computer ledger (KKB Exhibit #60) does not list Forman as part of the electronic printout. Instead, as noted in Mr. Nuzzo's December 3, 2014 letter (PDF 6), there are handwritten notations on the computer printout regarding Forman's expenses added on or after May 2012. PDF 24, 25:


12/1/11

SUBTOTAL FOR TRAVEL-KKB $ 19,143.61

Totals for all value codes $ 566,351.81

Report Criteria:
All value codes
Value notes are included
Sorted by: party, value code, start date, provider name

Forman - + 68,712.92

635,064.73

Mr. Foreman testify in May 2011. The computer ledger was printed out a year late in May 2012. The handwritten notations appear on the first and last pages of the ledger. PDF 24-25. The handwritten amount is **$68,712.92**, **three times the amount that Mr. Forman stated under oath that he expected to charge for all of his work in the case**. PDF 22. Although these handwritten comments were made sometime after the ledger was printed out in May 2012, KKB did not turn over a billing statement from Forman.

Mr. Foreman stated that at the time of the May 2011 trial he had been hired approximately 65 times by KKB, and over the prior six years had been paid approximately $1.5 million in fees. PDF 21, 23. Why was Forman's data missing from the computer printout? Why was it written in hand? Why was it more than three times the amount that he testified he was going to charge? How did Forman communicate this bill to KKB? There was also no explanation as to why I had not received a copy of this printout until December 2014, though it apparently was printed out in May 2012.

For another example, PDF 27 is a billing summary of previous invoices from JAMS (the organization that did the medmal mediation). The statement indicates that a refund was sent to

KKB on or about April 30, **2013** in the amount of $2,260. The JAMS billing statement does not explain why a refund was issued (PDF 28) about a year after the case was closed (and there was no explanation of the two credit memos from November 30, 2011).

It is not clear whether the D'Attilos were properly credited with these refunds/credits. There is a letter dated May 13, 2013 where KKB writes "There was another overpayment of costs to our lawsuit." PDF 29. While that may be referring to the JAMS refund given the date it was written, if so, the total reimbursement to the D'Attilos was only $2,170.81, not $2,260, an $89.19 underpayment. There is no explanation of this in the KKB "reconstruction", calling into question the accuracy of the entire reconstruction.

This was not the first unexplained overpayment from the D'Attilos' client funds. Six months earlier, on October 31, 2012, there is a KKB letter to Brad Gallant indicating that a medical illustrator had "recently returned" an over payment of $2,200.00" PDF 30. While it is not clear from this letter, it appears that the overpayment had been discovered by the medical illustrator, not KKB.

Those two overpayments, Forman's unexplained fees triple the amount he claimed he would charge, plus the amount recently calculated by KKB to be due to the D'Attilos ($1,659.72) illustrate a significant problem: there is no practical way for the D'Attilos to check the accuracy or legitimacy of the extraordinarily expensive medical malpractice case or KKB's belated admission of an overcharge.

To make matters worse, during the litigation process, the D'Attilos were never notified of these expenses and were never given a copy of any retainer agreements or other contracts which they could use to double check whether the rates charged by KKB vendors were the rates agreed to.

The documents KKB turned over in May 2015 do not help. For example, many of the checks were for multiple clients and therefore it is impossible to know how much was related to the D'Attilos. *See, e.g.*, PDF 31. Other checks are illegible. PDF 32. None of the checks confirm the accuracy of the payments or the legitimacy of the underlying bills.

Because KKB clients are not given copies of expenses as they are incurred or payments as they are made, there is no way for a client (who ultimately has to pay for these costs) to double check in real time. Now we are learning that it is also not possible to double check retrospectively. Yet, KKB does not acknowledge that there is a problem. Instead, KKB wants to be credited for doing all of this work. KKB's grievance response (pg. 28) states:

> Although not required under Rule 1.15 to do so, in order to dispel any claim of misappropriation of client funds, the KKB staff reconstructed 100% of the backup for the costs and expenses listed on the settlement statement signed by the D'Attilos. Attached for the panel's review is the spreadsheet for this accounting.[29] (Ex. 60) The panel should know that it was an enormous undertaking to recreate nine (9) years of information. We forwarded the complete history with all supporting documentation to Attorney Altschuler on May 19, 2015.

Of course if "it was an enormous undertaking" for KKB "to recreate nine (9) years of information" it would be impossible for a client to do it. "All supporting documentation" Nuzzo refers to does not include the underlying bills, retainer agreements, and contracts. Moreover, if it wasn't for my multiple requests for documentation, it does not appear as if KKB had any system in place to notice that the D'Attilos had been overcharged by a minimum of $1,659.72. What that really means is that there is likely other errors for other clients that will be difficult or impossible to figure out.

The June 30, 2011 stipulated agreement between KKB and Office of Chief Disciplinary Counsel (PDF 33-35) does not provide details as to what accounting shortcomings existed. It is clear that KKB has not maintained records and does not have safeguards in place to assure all client funds are returned. The D'Attillos were never consulted about any of the experts, never given contemporaneous updates regarding the cost of litigation (which they ultimately would have responsibility to pay) and, even worse, now three years after the case was settled, we learn that virtually nothing was documented though there are admitted errors and potentially other errors or deliberate overpayments that are impossible to determine at this point. Whether there is any intentional overstating of bills is not known although the Forman hand written notation (when compared with his testimony) certainly raises questions. The only paper trail that exists indicates that KKB took more money from the D'Attilos for costs than KKB was entitled to take.

MISSING DOCUMENTS

I know you said that you are going to request emails, including internal emails, but you may want to consider expanding that to any internal documents that have not previously been turned over, as well as non-redacted versions of what has been turned over (unless KKB provides a reason for redacting). There are several reasons for this.

KKB has not been forthcoming in providing documents. On June 11, 2014 Jim Horwitz told me that he believed that the only documents that had not been turned over were "internal notes." On July 14, 2014, Mr. Nuzzo stated that "information withheld (or redacted) was internal documents, emails, memos, raw research, etc." PDF 37.

I believe these internal documents may have important information regarding knowledge. For example, are there any memos or research related to the 2005 amendment issue? Are their communications with Forman in May 2013 or after regarding his bills? Are there communications between the attorneys that were not sent via email that may have relevant information regarding their knowledge?

Moreover, some of the documents withheld as "internal documents" turned out not to be internal documents at all. For example, in my June 15, 2015 letter to the Panel, I indicated that there were documents KKB included in their exhibits that I had never seen before but were not internal documents. See June 15, 2015 letter, pg. 2.

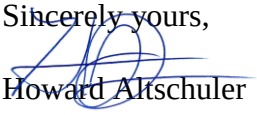
Some of the documents included in the KKB exhibits have substantial redactions (see, e.g. PDF 40-43), but without any explanation of why they were redacted. Some of these emails are crucial to the case. The documents turned over to me had no marked reductions although Nuzzo stated portions were redacted. PDF 38.

There are a number of questions regarding the authenticity or accuracy of documents (see for example my November 14, 2014 letter to Mr. Nuzzo, PDF 44-48). My concern is that KKB has not accurately described what it has turned over, has continually turned over new documents long after telling me everything had been turned over, and some of the recent disclosures are harmful to their case (for example the November 29, 2014 email from Nastri to her partners). There may be memos that were not distributed by email, as well as research which would indicate exactly what KKB was doing, or what they knew and when. In addition, there are probably letters and other documents such as retainer agreements that never made it into email format

While there is much more detail I could go into[1], please let me know if you have any questions. I will follow up with some additional details on other issues as soon as possible but if there are any specific questions you want me to address, please let me know.

I would be interested in meeting again anytime at your convenience either in Waterbury or your office after you meet with Mr. Nuzzo, to discuss the above and other further details.

Sincerely yours,



Howard Altschuler

[1] For example, there is a separate payment issue regarding KKB's failure to disclose payments accurately to Wood LLP (which is referenced in my clients' grievance, ¶215-216). I can provide more details if you wish.

Parenthetically, KKB misrepresents the tax issue in their grievance reply. For example, on their page 22, they misleadingly quote from Mr. Wood to give the impression that "after a better understanding of the procedural posture of the case, Mr. Wood" decided that he did not have a problem with the settlement agreement. However, the actual document quoted (KKB Exhibit 45, PDF 49-50) makes it very clear that Mr. Wood "continue[d] to have serious concerns about the signed agreement and the extent to which it prejudices our tax position." Wood continued to recommended a brand-new settlement agreement and the inclusion of a part of the payment as interest. The D'Attilos were never informed of any of this. We are currently working with counsel to obtain advice how to deal with this tax issue, but the bottom line is that it is still unresolved and there is still tax exposure.

SCANNED
DEC 20 2013

D'ATTILO V. VISCARELLO

SETTLEMENT		$25,000,000.00
Attorney's Fees (28%)	$7,000,000.00	
Lawsuit Costs as of 3/28/12	632,138.87	
Additional Cost to lawsuit**	2,925.86	
Nancy Cavaliere, RPT	13,400.00	
DayPitney LLP (probate fees & expenses)	33,674.14	
Net to Clients	17,317,861.13	
	$25,000,000.00	
Danny 75% of $17,317,861.13	$12,988,395.85	
Minus 50% of Adjustments**	164,180.55	
Keith Bradoc Gallant, Trustee, the Daniel Jacob D'Attilo Trust	$12,824,215.30	
Parents 25% of $17,317,861.13	$ 4,329,465.28	
Minus 50% of Adjustments*	164,180.55	
Cathy & Domenic D'Attilo	$ 4,165,284.73	

*Adjustments:

G, P & S, LLC, Attorneys for C L & P	$ 12,246.71
Lawsuit Funding Solutions	316,114.39
	$ 328,361.10

**Wood LLP (tax attorney)

APPROVED
DATE:

CATHY D'ATTILO

DOMENIC D'ATTILO

Howard Altschuler

From: James Horwitz <JHorwitz@KOSKOFF.com>
Sent: Thursday, May 29, 2014 4:02 PM
To: legalmalpractice@gmail.com
Subject: RE: D'Attilo Documents

Sensitivity: Confidential

Howard,
I have 2 cds of the remainder of the file. I am mailing those to you today. These cds are the remainder of our entire file with the exception of the bad faith mediation portion of the file. The mediation was the subject of a confidentiality agreement. If that last part of the file turns out to be something that you are interested in, as we understand the agreement, you would have to concur with its non-disclosure provisions.
Jim

From: legalmalpractice@gmail.com [mailto:legalmalpractice@gmail.com]
Sent: Thursday, May 29, 2014 11:37 AM
To: Kathleen Nastri; James Horwitz
Cc: Barbara Larocca
Subject: D'Attilo Documents
Importance: High
Sensitivity: Confidential

Hi Attorney Nastri and Attorney Horwitz:

This is in follow-up to my email on May 23 regarding the status of documents. Since I did not get a response, I was assuming I was going to get the remaining documents by now. Time is of the essence for me to get the complete file. Please either provide the remainder of the file or let me know what remains to be sent, and when I will get the documents/computer files.

Please let me know if you have any questions about this.

Sincerely yours,

Howard Altschuler
Confidential Email

This email message contains confidential information and is intended only for the individual named. If you are not the named email recipient, you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. E-mail transmission cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The sender therefore does not accept liability for any errors or omissions in the contents of this message, which arise as a result of e-mail transmission.

From: legalmalpractice@gmail.com [mailto:legalmalpractice@gmail.com]
Sent: Friday, May 23, 2014 8:40 AM
To: 'Barbara Larocca'
Cc: 'Kathleen Nastri'; 'James Horwitz'
Subject: RE: D'attilo
Importance: High
Sensitivity: Confidential

NUZZO & ROBERTS, L.L.C.
L A W O F F I C E S

ANTHONY NUZZO, JR.
RICHARD A. ROBERTS
DAVID J. WEIL
JANE S. BIETZ
ROBERT J. CHOMIAK, JR.
NICOLE C. CHOMIAK
JANE M. CARLOZZI
MICHELE C. CAMEROTA
JENNIFER CAVALIER MOZZER
AMBER J. HINES
NADINE M. PARE
KEVIN C. HINES
JASON K. MATTHEWS
JAMES R. FIORE
STACEY L. PITCHER
KRISTIN K. MULLINS
KELLY B. GAERTNER
JAMES P. HENKE
LAURA M. KRITZMAN
SEAN E. BOYD
DANIEL R. LABRECQUE
REGINA P. ARMON
NATALIE E. WAYNE

December 3, 2014

UPS Overnight Mail
Howard Altschuler, Esq.
Law Offices of Howard Altschuler
21 Perkins Road
Bethany, CT 06524

Re: Cathy and Domenic D'Attilo, et al

Dear Howard:

Enclosed is a copy of an internal computer ledger dated 5/8/2012 of the costs expended in the D'Attilo matter. You will note on the last page of the document there is a handwritten note for $68,712.92. We are informed that this was payment to the life care planner.

We are uncertain if there are any invoices still in existence related to this matter, and are verifying this now.

Very truly yours,

NUZZO & ROBERTS, L.L.C.

Anthony Nuzzo, Jr.

ANJ/dmf
Enclosure

\\fp01\nuzzo\WP\403049\259\CORRESPONDENCE\COUNSEL\Altschuler 12 03 14.doc

ONE TOWN CENTER
P.O. BOX 747
CHESHIRE, CONNECTICUT 06410
TELEPHONE (203) 250-2000
FAX (203) 250-3131
www.nuzzo-roberts.com

NUZZO & ROBERTS, L.L.C.
L A W O F F I C E S

ANTHONY NUZZO, JR.
RICHARD A. ROBERTS
DAVID J. WEIL
JANE S. BIETZ
ROBERT J. CHOMIAK, JR.
NICOLE C. CHOMIAK
JANE M. CARLOZZI
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KRISTIN K. MULLINS
KELLY B. GAERTNER
JAMES P. HENKE
LAURA M. KRITZMAN
SEAN E. BOYD
REGINA P. ARMON

May 19, 2015

Via UPS Overnight Mail
Howard Altschuler, Esquire
Law Offices of Howard Altschuler
21 Perkins Road
Bethany, CT 06524

Re: Cathy and Domenic D'Attilo, et al.

Dear Mr. Altschuler:

In follow up to my letter to you dated December 3, 2014, I enclose the following documents on disk:

1. A report prepared on May 18, 2015 which is a Cost Detail Report regarding the costs incurred on the D'Attilo matter;
2. Value Code Report dated May 8, 2012 (this document was previously sent to you on December 3, 2014);
3. Letter dated October 31, 2012 from Barbara Larocca to Attorney Gallant with a copy to Mr. and Mrs. D'Attilo;
4. Letter dated May 13, 2013 from Barbara Larocca to Attorney Gallant with a copy to Mr. and Mrs. D'Attilo;
5. Copy of check payable to Nancy Cavaliere Fisher dated May 15, 2012 in the amount of $13,400.00;
6. Copy of check payable to Day Pitney LLP dated May 15, 2012 in the amount of $33,674.14;
7. Copies of checks paid by the Koskoff firm in connection with the D'Attilo matter (Cost Detail Report, Costs Paid By Check, pages 1-14)
8. Documentation regarding Other Costs (Cost Detail Report, Other Costs, page 14 [Ref. No. 347-359]);
9. Documentation regarding Copying, Federal Express, LexisNexis, Mileage, postage and UPS;
10. Summary of Accounting Procedures used by the Koskoff firm to post direct expenses to client matters.

As noted on page 1 of the Cost Detail Report, the cost reimbursements to the firm were for funds advanced (primarily for depositions). In most cases, the witness would not agree to

ONE TOWN CENTER
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www.nuzzo-roberts.com

be deposed unless paid in advance. Once deposed, the other parties to the case reimbursed the firm their share of the cost for the deposition.

As indicated in number 7 above, copies of the checks listed under Costs Paid By Check are enclosed. (See Cost Detail Report, pages 1-14; Ref. Nos. 2 – 346). Please note that the checks marked with an 'X' denotes that the check was issued for multiple client matters. When the invoice was received, the bookkeeper posted the expense per matter to the electronic file. My client identified two checks that were not cashed. (See Cost Detail Report, page 1; Ref. No Refer No 1; page 8; Ref. No. 197). See discussion below.

Other Costs paid by the firm are listed on the Cost Detail Report, page 14; Ref. Nos. 347 – 359, along with enclosed documentation.

Direct Costs paid by the firm are on the Cost Detail Report, pages 16-20. As each expense is incurred, it is posted to the client matter. The enclosed documentation supports each, individual entry for Direct Costs posted to the D'Attilo matter.

Discussion:

My client determined that two checks were issued by the firm but were not cashed, which are identified by 'DNC' in the Note column. See Ref. No. 1 for $133.00 (pg. 1) and Ref. No. 197 for $12.00 (pg. 8) for a total of $145.00. Additionally, a former employee mistakenly posted several costs twice to the D'Attilo matter in the amount of ($1,539.59) See Schedule of Duplicates on the Cost Detail Report, page 21. Also, on February 12, 2009, the firm paid Yale Medical Library $48.00, but this payment was not posted to the D'Attilo matter. Therefore, Mr. and Mrs. D'Attilo and the Trust should be reimbursed $1,636.59 ($145.00 + $1,539.59 - $48.00).

Please provide me with the contact information of the current trustee. Also, advise how the checks should be allocated between Mr. and Mrs. D'Attilo and the Trust.

Very truly yours,

NUZZO & ROBERTS, L.L.C.

Anthony Nuzzo, Jr.

ANJ/dmf
Enclosures
\\fp01\nuzzo\WP\403049\259\CORRESPONDENCE\COUNSEL\Altschuler Cost Detail 05 19 15.doc

NO: X10-UWY-CV05-4010135-S

DANIEL JACOB D'ATTILO, PPA CATHY D'ATTILO, AND DOMINIC D'ATTILLO	:	SUPERIOR COURT COMPLEX LITIGATION DOCKET
v.	:	AT WATERBURY, CONNECTICUT
RICHARD VISCARELLO, ET AL	:	MAY 10, 2011

TRIAL DAY 8
P.M. SESSION, PART 4

CROSS-EXAMINATION OF LAWRENCE FORMAN

BEFORE THE HONORABLE KEVIN G. DUBAY, JUDGE
AND A JURY

A P P E A R A N C E S :

Representing the Plaintiff:

ATTORNEY KATHLEEN NASTRI
ATTORNEY JAMES HORWITZ
Koskoff, Koskoff & Bieder PC.
350 Fairfield Avenue
Bridgeport, Connecticut 06604

Representing Defendants:

ATTORNEY JAMES ROSENBLUM
ATTORNEY JAMES BIONDO
Rosenblum & Newfield, LLC
One Landmark Square
5th Floor
Stamford, Connecticut 06901

Recorded By:
Janet Salerno

Transcribed By:
Janet M. Salerno
Court Recording Monitor
400 Grand Street
Waterbury, Connecticut 0670

CROSS-EXAMINATION OF MR. FORMAN BY ATTORNEY BIONDO:

Q Good afternoon, Mr. Forman.

A Nice to meet you, sir.

Q As you elicited to this jury earlier today, I guess it was still this afternoon, this litigation process, the courtroom, testifying from a witness stand, that's no strange phenomenon to you. Correct?

A Oh, I'm here at least 15 times a year.

Q Correct -- In Connecticut?

A No, not -- Mainly in Florida, but I'm here a few times in Connecticut.

Q Okay. In fact, I think you told us before that you've testified in total throughout your career hundreds of times throughout the country. Correct?

A I probably -- I probably have.

Q I'm sorry?

A I said I probably have.

Q You probably have. And we're talking 300, 400 -- and I think you've told me before you don't know exactly how much, but it's something in that range. Correct?

A I'm 63 years old. I've been doing it for awhile. So, it's got to be at least that many.

Q Okay. And, Doctor, the --

A Mr.

Q Mr. --

A No problem.

Q -- Mr. Forman. And I think you told this jury

earlier today that with the Koskoff firm alone in the last six years you've reviewed 65 cases for them?

A I think that's what they said, yes.

Q Okay. Did you do any research on that?

A No, I don't have a document to support that.

Q Okay. But you don't disagree with the number.

A I accept what they said.

Q Okay. And of the 65 or so cases over the last six years, some of those cases, I take it, would involve testifying in court. Correct?

A Oh, of course.

Q And, obviously, you have -- I shouldn't say obviously. I'll ask you: If you've testified in court, in your experience, most likely you've given a deposition in the past. Correct?

A I would think so.

Q And I take it Doctor of the 65 cases that you've reviewed for Koskoff, Koskoff & Bieder over the last six years, the -- there were some cases where you did not testify by way of -- whether it be deposition or trial.

A Probably.

Q And -- Well, do you have recollection of any of those cases where you did not testify? I don't want you to guess as to anything, Doctor --

A I don't --

Q Doctor -- I keep calling you doctor -- Mr. Forman.

A That's okay. Thank you for the mistake. No, I don't

A Yes, sir.
Q And you, I take it, stayed in one of the local hotels?
A Oh, sure.
Q And you're flying out tonight, tomorrow?
A If you let me off the stand, yes.
Q You'll be off the stand at some time --
A Thank you.
Q -- and it will be today.
A My wife will appreciate that.
Q The long and short is, you're flying home either tonight or tomorrow. Correct?
A Hopefully tonight, yes.
Q And fair to say that you're going to be reimbursed for your travel by the Koskoff law firm?
A For the actual plane ticket, of course.
Q Correct. And do you bill for your travel time?
A I usually do. I didn't in this time because I brought plenty of work with me. But if I have no work to do on the plane, yes, I bill.
Q Okay. So -- And I'm not going to hold you to an exact number, but if we're looking at this case alone, you're total bill, we're talking once it's finalized, is somewhere around $25,000?
A I'd say 23 to 25, that's about the average.
Q Okay. On average for a case where you testified at deposition and trial. Correct?

A Yeah, of this magnitude, sure.
Q Now -- And I think you mentioned to the jury earlier, that of that -- of those 65 or so cases that you've worked on with the Koskoff law firm over the last six years, payments have been approximately $1.5 million over the last six years just for the Koskoff law firm?
A Yeah, I didn't know that, but I heard it earlier; yes.
Q Surprised by that number, Doctor -- Mr. Forman?
A Very frankly, I am, yes.
Q I'm sorry?
A I said to be very frank with you, I am.
Q Okay. That breaks down to, give or take a few dollars, $250,000 a year that your company gets paid by the Koskoff firm for the last six years.
A To do the work that we do, that's seems right.
Q Now, Mr. Forman, obviously, you told us you don't just work for the Koskoff firm. You've testified for plaintiff's firms, again, all over the country. Correct?
A Sure.
Q And in -- I take it, and I don't know how other states do their civil procedure, but I take it it's something similar to Connecticut where you're going to meet with family members, you're going to evaluate -- do an evaluation, prepare a report, and then maybe give some form of testimony. Is that fairly consistent throughout the country?

D'Attilio, Ms. Cathy	Case Type: MEDMAL	DOI: 02/02/2003	LimDate:
Case #: 202328 ( )	Class: B	Assigned: KLN	Date Opened: 02/28/2003

6871.92

Value Code Report

Value Code	Dates of Service	Provider Of Service	Total Amount
COPIES	5/1/2003 - 5/1/2003 303520--250073	ChartOne, Inc.-Texas	124.76
COPIES	5/7/2003 - 5/7/2003 Inv.0305-5	Stamford Hospital	217.75
COPIES	7/8/2003 - 7/8/2003 Inv.#0306-14	Stamford Hospital	52.00
COPIES	7/8/2003 - 7/8/2003 Prepayment for records	United Visiting Nurse Association	14.85
COPIES	10/8/2003 - 10/8/2003 Inv.# 7343	Legal X X-Ray Duplicating	247.50
COPIES	4/2/2004 - 4/2/2004 Inv.date 3/25/04	Pedi-Care, PC	6.25
COPIES	5/18/2004 - 5/18/2004 Inv.# 303520--304552	ChartOne, Inc.-Texas	42.10
COPIES	6/17/2004 - 6/17/2004 Inv.# 13965	Copy Graphics	78.11
COPIES	11/5/2004 - 11/5/2004 10/15/04	Copying	192.75
COPIES	1/31/2005 - 1/31/2005 Inv# 9427	Legal X X-Ray Duplicating	247.50
COPIES	2/9/2005 - 2/9/2005 2VHS tapes	Video World	31.80
COPIES	2/23/2005 - 2/23/2005 2/15/05	Copying	9.45
COPIES	3/3/2005 - 3/3/2005 Inv# 14940	Copy Graphics	378.05
COPIES	3/4/2005 - 3/4/2005 Inv#0020505872	Smart Document Solutions, LLC	230.23
COPIES	3/31/2005 - 3/31/2005 2/28/05	Copying	5.40
COPIES	3/31/2005 - 3/31/2005 3/11/05	Copying	31.50
COPIES	5/3/2005 - 5/3/2005 Inv. 5/2/05	ATG Rehab	3.95
COPIES	5/3/2005 - 5/3/2005 Inv. #1473	Oronoque Pharmacy, Inc.	2.87
COPIES	5/3/2005 - 5/3/2005 Daniel's records	Rehabilitation Associates, Inc.	111.80

D'Attilo, Ms. Cathy	Case Type: MEDMAL	DOI: 02/02/2003	LimDate:
Case #: 202328 ( )	Class: B	Assigned: KLN	Date Opened: 02/28/2003

Value Code Report

Value Code	Dates of Service	Provider Of Service	Total Amount
TRAVEL-KKB	8/24/2011 - 8/24/2011 6/1/11	American Express	1,535.14
TRAVEL-KKB	9/13/2011 - 9/13/2011 8/1/11	American Express	69.30
TRAVEL-KKB	1/12/2012 - 1/12/2012 1/11/12 breakfast & lunch	Bitzer, Ms. Jane E.	143.92
TRAVEL-KKB	1/20/2012 - 1/20/2012 12/1/11	American Express	1,482.01
		SUBTOTAL FOR TRAVEL-KKB	$ 19,143.61
Totals for all value codes			$ 566,351.81

Report Criteria:

All value codes
Value notes are included
Sorted by: party, value code, start date, provider name

Bitzer - + 68,712.92

635,064.73

[A225]

THE RESOLUTION EXPERTS®

STATEMENT OF ACCOUNT

Statement Date
04/30/13

TO: **Michael P. Koskoff, Esq.**
Koskoff Koskoff & Bieder PC
350 Fairfield Ave.
5th Floor
Bridgeport, CT 06604

Reference #: **1425009806** DD
Billing Specialist: **Erwin Gonzalez**
Telephone: **[redacted]42**
Employer ID: [redacted]

RE: **D'Attilo, Daniel Jacob ppa Cathy D'Attilo et al. vs. Viscarello, Richard, M.D. and Maternal-Fetal Care, PC**
Representing: **Daniel Jacob D'Attilo**
Cathy D'Attilo
Neutrals(s): **David Geronemus Esq.**
Hearing Type: **Mediation**
REP# 2

Date	Description	Charges	Credits	Balance
10/04/11	INVOICE #0002426116-425 *	14,625.00		14,625.00
10/12/11	CK #83802 1-25 Paid By: Koskoff, Koskoff & Bieder		14,625.00	0.00
10/31/11	INVOICE #0002447534-425	400.79		400.79
11/29/11	CK #84312 1-12 Paid By: Koskoff, Koskoff & Bieder		400.79	0.00
11/30/11	CREDIT MEMO #0002472951		2,375.00	(2,375.00)
11/30/11	INVOICE #0002472952-425	2,532.50		157.50
11/30/11	CREDIT MEMO # #0002475239 *		4,075.00	(3,917.50)
11/30/11	INVOICE #0002475240-425	902.50		(3,015.00)
12/20/11	INVOICE #0002486004-425	5,275.00		2,260.00
12/30/11	INVOICE #0002496022-425	142.50		2,402.50
01/17/12	CK #84739 3-14 Paid By: Koskoff, Koskoff & Bieder		2,260.00	142.50
01/24/12	CK #84988 10-26 Paid By: Koskoff, Koskoff & Bieder		2,402.50	(2,260.00)
04/30/13	REFUND #CR102865	2,260.00		0.00

Outstanding Balance: 0.00

YOUR ACCOUNT BALANCE IS DUE UPON RECEIPT
Please make checks payable to JAMS, Inc. and mail to:
P.O. BOX 512850
Los Angeles, CA 90051-0850

Koskoff
Koskoff
&
Bieder PC

Law Offices

P.O. Box 1661
Bridgeport, CT 06601

350 Fairfield Avenue
Bridgeport, CT 06604

(203) 336-4421
FAX (203) 368-3244

e-mail: kkb@koskoff.com
www.koskoff.com

Theodore I. Koskoff
(1913-1989)
Michael P. Koskoff
Richard A. Bieder
Joel H. Lichtenstein
John D. Jessep
Christopher D. Bernard*
Carey B. Reilly
James D. Horwitz
Joshua D. Koskoff
Regina M. Murphy
Antonio Ponvert III
Kathleen L. Nastri
William M. Bloss
J. Craig Smith
Sean K. McElligott
Gertrude A. Kiaunis
Cynthia C. Bott
Alinor C. Sterling
David M. Bernard
*Certified Civil Trial Advocate
National Board of Trial Advocacy

Of Counsel
James Wu, LLC
Preston C. Tisdale

Paralegals
Linda Grossberg
Barbara Larocca
Beth Vogler
Diana V. Orozco
Patricia M. Harris, R.N.
Marge Esposito
Wendy Grosso
Diane C. Rivera, R.N.
Diane L. Zalewski
Terri L. Beatty
Janet E. Mitchell
Julie A. Alleyne
Diana C. Coppola
Karen M. Jacobs, R.N.
Evelyn McGrath, R.N.

May 13, 2013

K. Bradoc Gallant, Esq.
Day Pitney, LLP
One Audubon Street
New Haven, CT 06511

Re: D'Attilo, et al v. Viscarello, et al

Dear Brad:

There was another overpayment of costs to our lawsuit.

Based on the 80/20 split, I am enclosing our check in the amount of $1,736.65 made payable to the trust, and I am forwarding a check in the amount of $434.16 to Cathy and Dom.

Very truly yours,

Barbara Larocca
Paralegal – Kathleen L. Nastri

:bfl
Enclosure

cc: Cathy and Domenic D'Attilo (w/check)

Koskoff
Koskoff
&
Bieder PC

Law Offices

P.O. Box 1661
Bridgeport, CT 06601

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Bridgeport, CT 06604

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Cynthia C. Bott
Alinor C. Sterling
David M. Bernard

**Certified Civil Trial Advocate*
National Board of Trial Advocacy

Of Counsel
James Wu, LLC
Preston C. Tisdale

Paralegals
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Diane L. Zalewski
Terri L. Beatty
Janet E. Mitchell
Julie A. Alleyne
Diana C. Coppola
Karen M. Jacobs, R.N.
Evelyn McGrath, R.N.

October 31, 2012

K. Bradoc Gallant, Esq.
Day Pitney, LLP
One Audubon Street
New Haven, CT 06511

RE: D'Attilo, et al, v.
Viscarello, et al

Dear Brad:

There was an overpayment of $2,200.00 to our medical illustrator which she recently returned.

Based on the 80/20 split, I am enclosing our check in the amount of $1,760.00 made payable to the trust, and I am forwarding a check in the amount of $440.00 to Cathy & Dom.

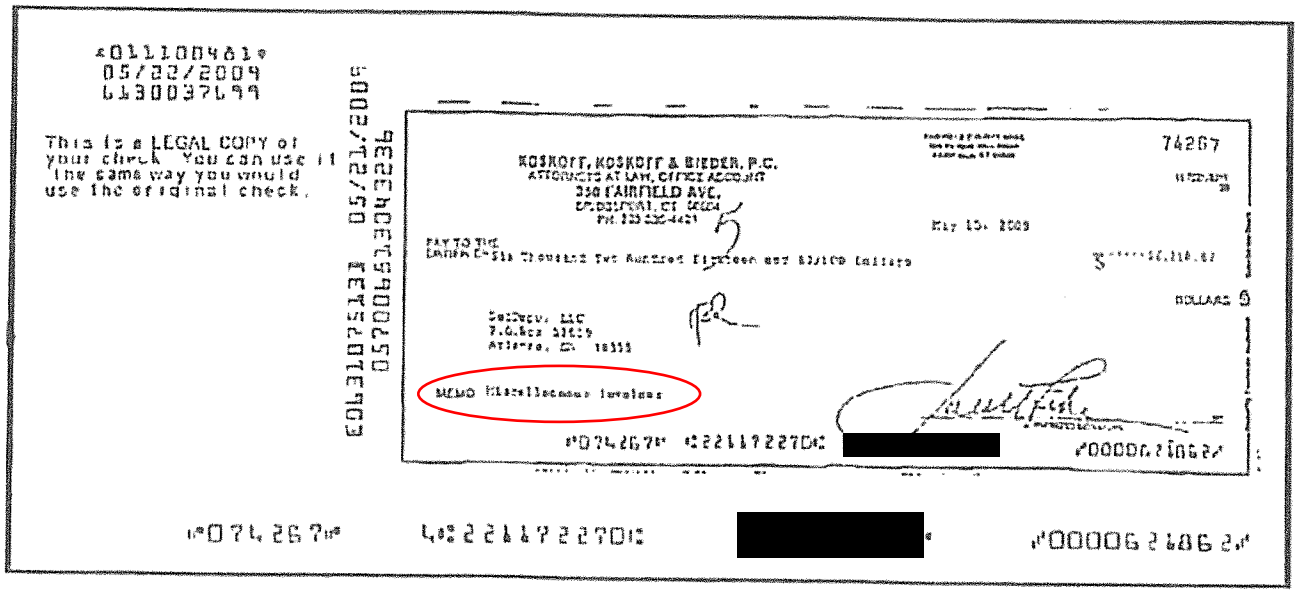
Very truly yours,

Barbara Larocca
Paralegal – Kathleen L. Nastri

:bfl
Enc.

cc: Cathy & Domenic D'Attilo, w/check

241



This is a LEGAL COPY of your check. You can use it the same way you would use the original check.

KOSKOFF, KOSKOFF & BIEDER, P.C.
ATTORNEYS AT LAW, OFFICE ACCOUNT
350 FAIRFIELD AVE.
BRIDGEPORT, CT 06604
PH: 203-336-4421

74267

May 15, 2009

PAY TO THE ORDER OF Six Thousand Two Hundred Eighteen and 62/100 Dollars

$ ******6,218.62

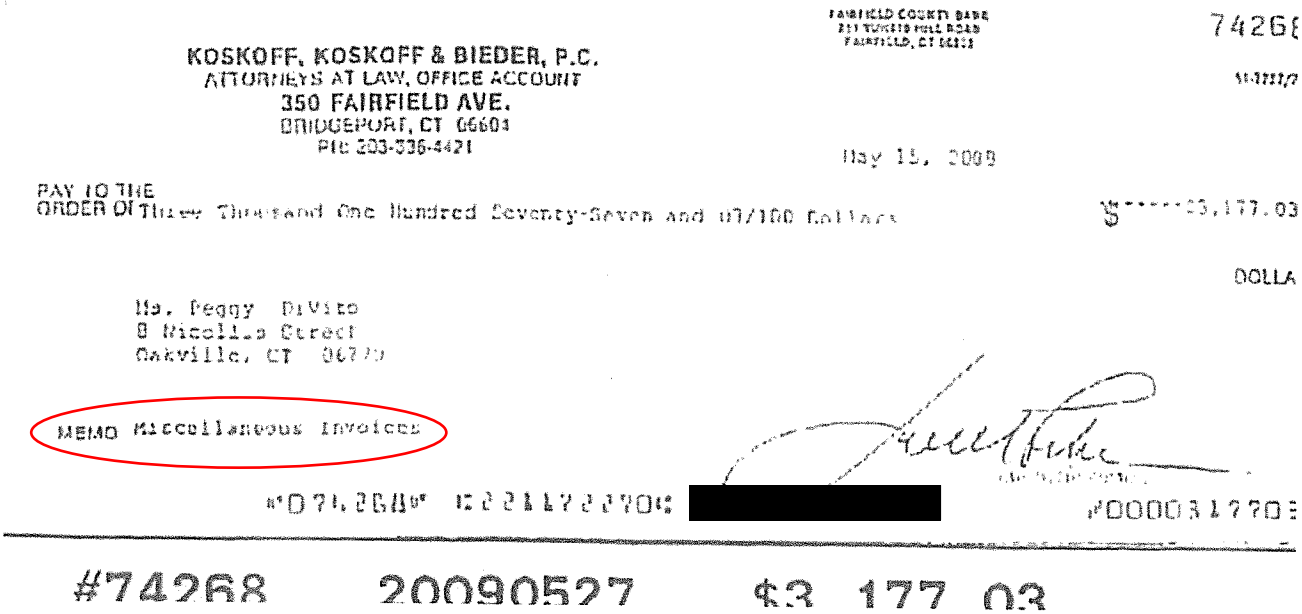
DOLLARS

MEMO Miscellaneous Invoices

#074267# ⑆221172270⑆ [redacted] #00006218624

#74267 20090522 $6,218.62

242 243 244



KOSKOFF, KOSKOFF & BIEDER, P.C.
ATTORNEYS AT LAW, OFFICE ACCOUNT
350 FAIRFIELD AVE.
BRIDGEPORT, CT 06604
PH: 203-336-4421

FAIRFIELD COUNTY BANK
851 TUNXIS HILL ROAD
FAIRFIELD, CT 06825

74268

May 15, 2009

PAY TO THE ORDER OF Three Thousand One Hundred Seventy-Seven and 03/100 Dollars

$ ******3,177.03

DOLLARS

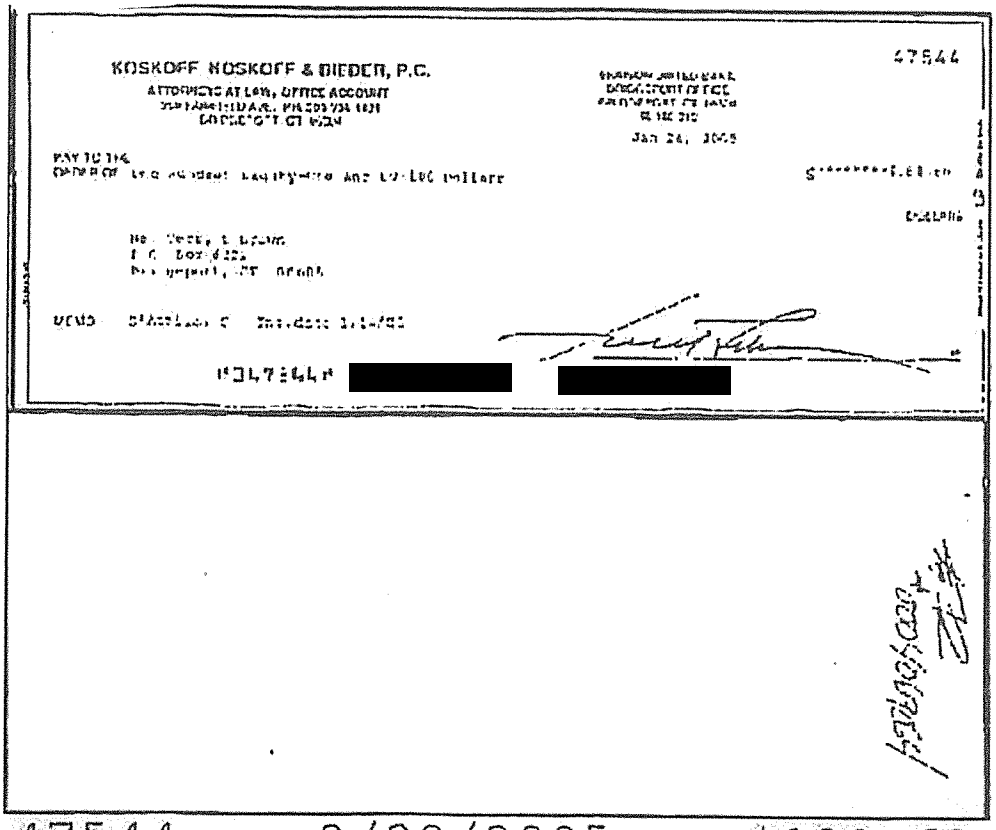
Ms. Peggy DiVito
8 Nicolls Street
Oakville, CT 06779

MEMO Miscellaneous Invoices

#074268# ⑆221172270⑆ [redacted] #00003177038

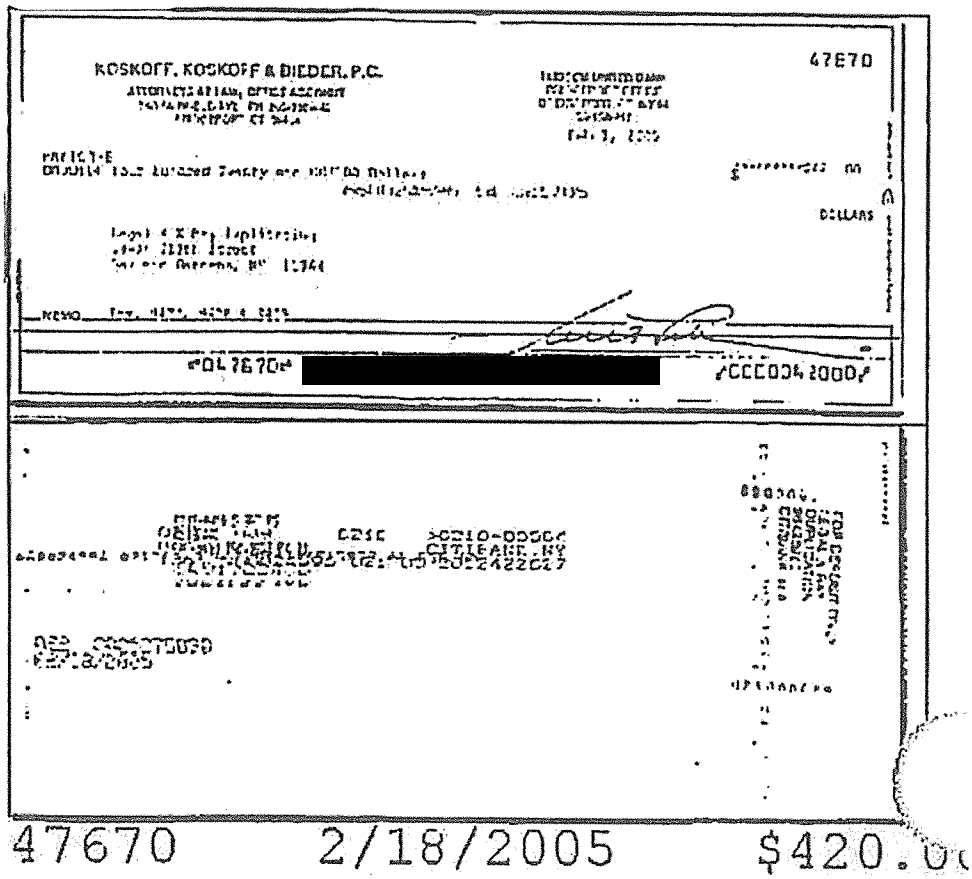
#74268 20090527 $3,177.03

22



47544 2/28/2005 $181.60

23



47670 2/18/2005 $420.00

NO. NNH-CV-11-	:	
OFFICE OF CHIEF DISCIPLINARY COUNSEL,	:	SUPERIOR COURT
Petitioner,	:	JUDICIAL DISTRICT OF NEW HAVEN AT NEW HAVEN
V.	:	
KOSKOFF KOSKOFF & BIEDER, PC,	:	
Respondent.	:	JUNE 30, 2011

PETITION UNDER PRACTICE BOOK SECTION 2-27(e)

In accordance with Practice Book § 2-27(e), Petitioner alleges as follows:

1. Respondent ("the Firm") is a Connecticut law firm with its principal place of business in Bridgeport, Connecticut. None of its current or former shareholders has a record of professional discipline.

2. As a result of a random audit of the Firm conducted in accordance with Practice Book §2-27(e) and SGC Rule of Procedure 13, the SGC's auditors determined the Firm had not been in compliance with certain of the requirements of Practice Book §2-27(b).

3. On being advised of such non-compliance, the Firm undertook voluntary remedial action and immediate steps to ensure its conformity with each of the requirements of Section 2-27(b).

4. No funds of the Firm's clients, or any funds of any other persons or entities, were used in any fashion by any current or former attorney of the Firm, or otherwise were at risk.

5. Based upon the forgoing, and the fact that the Firm's non-compliance is not likely to re-occur, the interests of attorney discipline have been fully met, and therefore no order of discipline is warranted against the Firm or any of its attorneys, and the undersigned Office has entered into a stipulation with the Firm providing that it will recommend to the Court that it enter Judgment dismissing this proceeding. A copy of the parties' Stipulated Judgment of Dismissal is attached to this Petition.

Date: June 30, 2011

THE PETITIONER
OFFICE OF DISCIPLINARY COUNSEL

By: _____

Patricia A. King
Office of Chief Disciplinary Counsel
Juris No. 300752
100 Washington Street
Hartford, CT 06106
Phone 860-706-5055
Fax 860-706-5063
pking@ct.jud.gov

NO. NNH-CV-11-	:	
OFFICE OF CHIEF DISCIPLINARY COUNSEL,	:	SUPERIOR COURT
Petitioner,	:	JUDICIAL DISTRICT OF NEW HAVEN AT NEW HAVEN
V.	:	
KOSKOFF KOSKOFF & BIEDER, PC,	:	
Respondent.	:	

STIPULATED JUDGMENT OF DISMISSAL

Petitioner and Respondent in the above-entitled matter, by and through their respective counsel, hereby stipulate and agree that for the reasons set forth in the Petition attached hereto the Court may enter Judgment dismissing this proceeding and directing the Clerk of Court to close the Court's file therein.

Date: June 30, 2011

THE PETITIONER
OFFICE OF CHIEF DISCIPLINARY COUNSEL

By: _____

Patricia A. King
Office of Chief Disciplinary Counsel
Juris No. 300752
100 Washington Street
Hartford, CT 06106
Phone 860-706-5055
Fax 860-706-5063
pking@ct.jud.gov

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&
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Theodore I. Koskoff
(1913-1989)
Michael P. Koskoff
Richard A. Bieder
Joel H. Lichtenstein
Christopher D. Bernard
Carey B. Reilly
James D. Horwitz
Joshua D. Koskoff
Regina M. Murphy
Antonio Ponvert III
Kathleen L. Nastri
William M. Bloss
J. Craig Smith
Sean K. McElligott
Cynthia C. Bott
Alinor C. Sterling
David M. Bernard

Of Counsel
James Wu, LLC
Preston C. Tisdale

Paralegals
Linda Grossberg
Barbara Larocca
Beth Vogler
Diana V. Orozco
Patricia M. Harris, R.N.
Marge Esposito
Wendy Grosso
Diane C. Rivera, R.N.
Diane L. Zalewski
Terri L. Beatty
Janet E. Mitchell
Julie A. Alleyne
Diana C. Coppola
Karen M. Jacobs, R.N.
Ruth W. Dushay, R.N.
Tara Engelman, R.N.

June 11, 2014

VIA HAND DELIVERY

Howard Altschuler, Esquire
Law Offices of Howard Altschuler
21 Perkins Road
Bethany, CT 06524

Re: Cathy and Domenic D'Attilo, et al

Dear Attorney Altschuler:

I have your letter dated June 10, 2014. Let me first say that Kathleen and I are sorry to hear that Cathy and Domenic D'Attilo may have encountered problems since our representation was concluded.

From your first communication on May 13, 2014, we assembled what we believed to be the history of this matter. We estimate that by May 30th, we had already sent you approximately 100,000 pages of documents.

Since then, we have reviewed our electronic data and archived files and are providing you with additional records that we have located. We have also asked an outside law firm to review whatever remaining information we have, to be certain that our firm has complied with the Connecticut Rules of Professional Conduct. We believe the remaining documents to be internal notes, which are not required to be produced. If after their review, there are any other documents that should be sent to you, they will be forwarded to you immediately.

Please pass on our best regards to the D'Attilo family.

Very truly yours,

James D. Horwitz

JDH/yj
Enclosure

NUZZO & ROBERTS, L.L.C.
LAW OFFICES

ANTHONY NUZZO, JR.
RICHARD A. ROBERTS
DAVID J. WEIL
JANE S. BIETZ
ROBERT J. CHOMIAK, JR.
NICOLE C. CHOMIAK
JANE M. CARLOZZI
MICHELE C. CAMEROTA
JENNIFER CAVALIER MOZZER
AMBER J. HINES
NADINE M. PARE
KEVIN C. HINES
JASON K. MATTHEWS
JAMES R. FIORE
STACEY L. PITCHER
KRISTIN K. MULLINS
KELLY B. GAERTNER
JAMES P. HENKE
LAURA M. KRITZMAN
SEAN E. BOYD
DANIEL R. LABRECQUE
REGINA P. ARMON
NATALIE E. WAYNE

July 10, 2014

VIA REGULAR MAIL
Howard Altschuler, Esq.
Law Offices of Howard Altschuler
21 Perkins Road
Bethany, CT 06524

Re: Cathy and Domenic D'Attilo, et al

Dear Attorney Altschuler,

I have your letter of July 1, 2014. Let me start by saying that it is not the intent of my clients to withhold information that the D'Attilos are entitled to.

Information related to any given closed file is electronically stored in various programs, with no one program containing all of the records related to the file. It is my understanding that, with the exception of a settlement folder, the hard "file" is then destroyed. Therefore, it is a time consuming process to locate all records related to this matter. [1]

Because your initial inquiry appeared to be focused on post trial records to include the life care plan and trial excerpts related to Danny's future care needs, my clients attempted to first locate these records and provided them to you. Since then, my clients responded to your requests for specific documents to include, trial transcripts, documents related to post verdict settlement discussions and the trust. They also continued their efforts to locate all of the information related to this matter and have provided you with over 100,000 records. The presence of many duplicate documents is as a result of how the file was stored when it was closed and also because my clients were initially responding to specific requests for documents and then some of these same items likely were reproduced when the electronically stored files were sent separately.

The only information withheld (or redacted) was internal documents i.e., emails, memos, raw research, etc. The D'Attilos are entitled to their "file," which does not generally include such internal documents. Please see Ethics Opinion 84-3, which is attached.

[1] The settlement folder that contained the settlement check was partially copied to respond to your initial requests. It has since been copied in its entirety (except internal documents), which resulted in your receiving a copy of the settlement check. Again there was never any intention to hold back a copy of the draft.

ONE TOWN CENTER
P.O. BOX 747
CHESHIRE, CONNECTICUT 06410
TELEPHONE (203) 250-2000
FAX (203) 250-3131
www.nuzzo-roberts.com

Regarding original documents, my clients have the original retainer, three consent to settle documents and the acknowledgement of receipt of settlement funds. Enclosed are color copies of the originals. As to the settlement statement, it was sent by email to Mrs. D'Attilo, signed and emailed back and therefore, my clients were never in possession of an original, signed settlement statement. My clients are also not in possession of any original trust or probate documents.

As to your repeated reference to comments made by Attorney Horwitz to the effect that he turned over to you the remainder of the file, aside from the internal documents which were specifically withheld, it was his belief, at that time, that he had. Since this matter was worked on by multiple staff and lawyers, Attorney Horwitz assumed, at the time, that all information related to this matter was part of the archived record that was sent to you.

You would agree that as noted in your letter of May 13, 2014, what was of immediate concern to you was copies of documents related to the "settlement and trust issues". Since that time, my clients have been assembling documents related to a matter that spanned 9 years, including two trials. I want to be very clear that my clients take their responsibility to Danny, Cathy and Domenic D'Attilo very seriously. To the extent we can be of further assistance, please let us know.

Very truly yours,

NUZZO & ROBERTS, L.L.C.

Anthony Nuzzo, Jr.

ANJ/dmf
Enclosures

\\fp01\nuzzo\WP\403049\259\CORRESPONDENCE\COUNSEL\Let Altschuler 07 10 14.doc

Barbara Larocca

From: Kathleen Nastri
Sent: Thursday, February 09, 2012 4:24 PM
To: Barbara Larocca
Subject: FW: D'Attilo

[redacted]

From: Gallant, Brad [mailto:bgallant@daypitney.com]
Sent: Thursday, February 09, 2012 4:25 PM
To: Kathleen Nastri
Subject: RE: D'Attilo

I better have all those documents too please.

From: Kathleen Nastri [mailto:KNastri@KOSKOFF.com]
Sent: Thursday, February 09, 2012 4:16 PM
To: Gallant, Brad
Subject: FW: D'Attilo

FYI. We had a long talk. I tried to answer some of her questions. She wants the complaint, fee agreement, costs, etc. She knows (because I told her) that you are involved.
Kathleen

From: Kathleen Nastri
Sent: Thursday, February 09, 2012 4:14 PM
To: 'cfries@coynelaw.com'
Cc: James Horwitz; Barbara.Larocca
Subject: D'Attilo

Hi Colleen. Nice talking to you today. I'm glad you are going to be involved in the case. I am leaving early tomorrow to go to Phoenix (AAJ convention) and will be gone through next week. I have asked my paralegal, Barbara, to collect the information you need to begin your review. We should have it to you next week. If you need anything in the meantime, you can call Jim Horwitz here. You can always reach me on my cell: 203-577-3649.

Kathleen

Kathleen L. Nastri
Koskoff, Koskoff & Bieder
203-336-4421

KK&B

Koskoff, Koskoff & Bieder, PC
350 Fairfield Ave.
Bridgeport, CT 06604

Complaint
Itemization of costs
Retainer

From: Kathleen Nastri <KNastri@KOSKOFF.com>
Sent: Thursday, February 9, 2012 4:23 PM
To: James Horwitz <JHorwitz@KOSKOFF.com>
Subject: FW: D'Attilo

[redacted]

From: Gallant, Brad [mailto:bgallant@daypitney.com]
Sent: Thursday, February 09, 2012 4:24 PM
To: Kathleen Nastri
Subject: RE: D'Attilo

And so it begins..... But at least we are off to a good start with her. Domenic called this afternoon saying he needed to know that he would receive at least $4.2 MM. I assured him we were doing everything possible.... Have a good trip to AZ.

From: Kathleen Nastri [mailto:KNastri@KOSKOFF.com]
Sent: Thursday, February 09, 2012 4:16 PM
To: Gallant, Brad
Subject: FW: D'Attilo

FYI. We had a long talk. I tried to answer some of her questions. She wants the complaint, fee agreement, costs, etc. She knows (because I told her) that you are involved.
Kathleen

From: Kathleen Nastri
Sent: Thursday, February 09, 2012 4:14 PM
To: 'cfries@coynelaw.com'
Cc: James Horwitz; Barbara Larocca
Subject: D'Attilo

Hi Colleen. Nice talking to you today. I'm glad you are going to be involved in the case. I am leaving early tomorrow to go to Phoenix (AAJ convention) and will be gone through next week. I have asked my paralegal, Barbara, to collect the information you need to begin your review. We should have it to you next week. If you need anything in the meantime, you can call Jim Horwitz here. You can always reach me on my cell: 203-577-3649.

Kathleen

Kathleen L. Nastri
Koskoff, Koskoff & Bieder
203-336-4421

KK&B

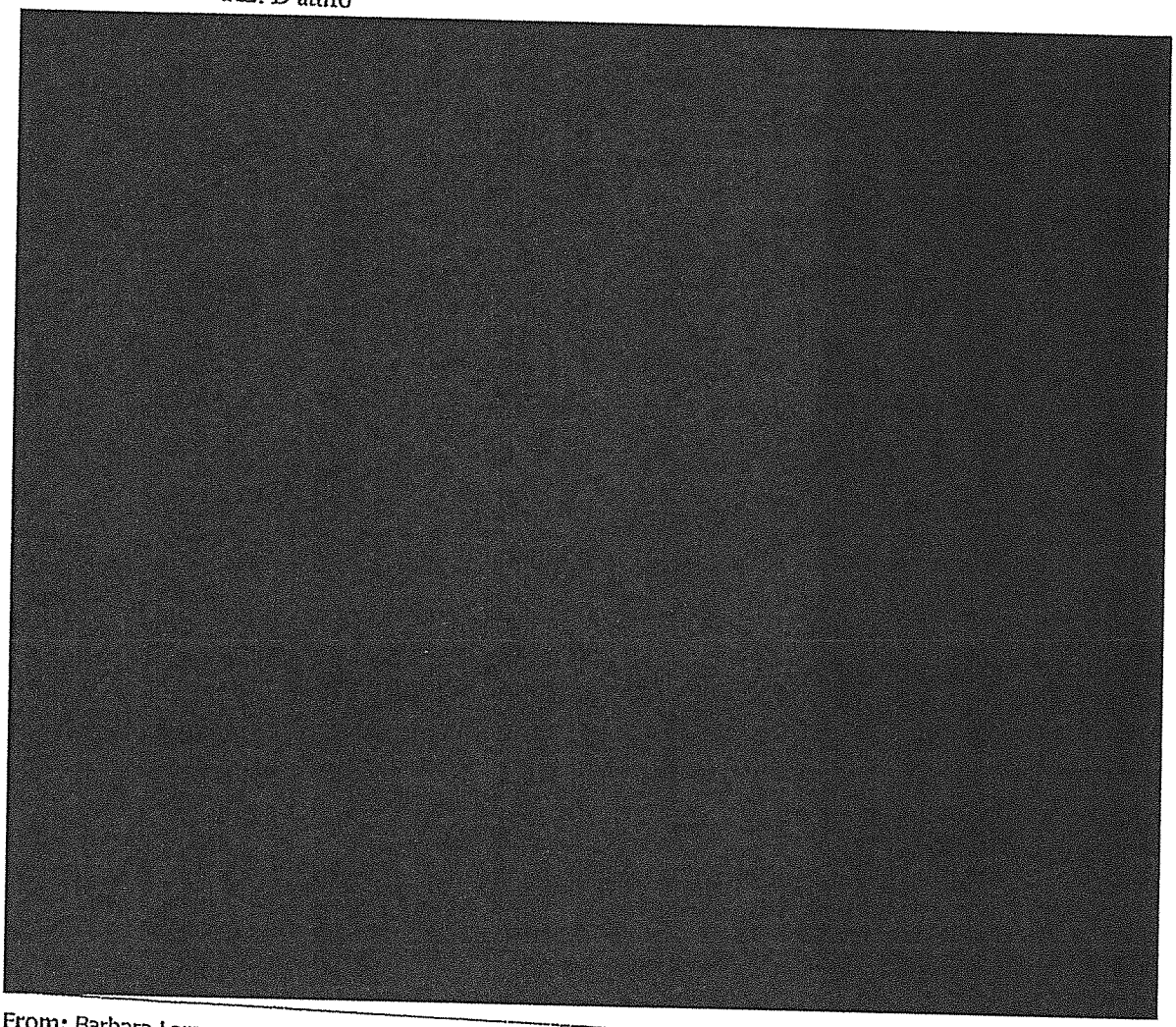
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KK&B

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203.336.4421
www.koskoff.com

From: Barbara Larocca </O=KOSKOFF/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=BFBARBIERO>
Sent: Wednesday, February 15, 2012 1:55 PM
To: Kathleen Nastri <KNastri@KOSKOFF.com>
Subject: RE: D'attilo



From: Barbara Larocca
Sent: Wednesday, February 15, 2012 10:58 AM
To: bgallant@daypitney.com
Cc: Kathleen Nastri; James Horwitz
Subject: FW: D'attilo

Dear Brad: Below is the email I sent to Colleen Fries.

From: Barbara Larocca
Sent: Wednesday, February 15, 2012 10:55 AM

From: James Horwitz </O=KOSKOFF/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=JHORWITZ>
Sent: Wednesday, April 25, 2012 7:51 PM
To: Kathleen Nastri <KNastri@KOSKOFF.com>
Subject: Fwd: D'Attilo v. Viscarello

[redacted]

Begin forwarded message:

From: "Goldman, Stephen" <SGOLDMAN@RC.com>
Date: April 25, 2012 4:17:15 PM EDT
To: "Kathleen Nastri (knastri@koskoff.com)" <knastri@koskoff.com>, James Horwitz <JHorwitz@KOSKOFF.com>
Subject: D'Attilo v. Viscarello

Earlier today, I received a hand delivered letter from Jim , together with a Probate Court order and a withdrawal of action. I also received a phone message from Jim asking me to call, but I haven't been able to reach either of you. Jim's letter asks me to have a check prepared in the amount of $25 million, and to call him so that he can get it picked up. The Order references an Application to Compromise which I have not seen. I did not have any prior notice of the hearing either, so I had no idea about the timing of court approval. The Order also references $12,823,395.00 in cash being "an approximate net to the guardianship estate" I have also previously been sent various drafts of proposed addenda to the settlement agreement we executed in January. The draft addenda provide for different methods of payment.

The bottom line is that I'm getting a lot of mixed messages as to what you want done and how you want it done, and I do not have a clear understanding of what the Court has ordered. Could one of you call me to straighten this out? I want to work with you guys to get this thing completed the way you want it while also protecting my client's interests, but you're not making it easy.

I'll be in my office until around 5:30, and then out the remainder of the week. If you can't get me today, please call tomorrow or Friday on my cell at 860-930-8966.

Thanks

Steve

Stephen E. Goldman

Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103-3597
Direct 860-275-8255 | Fax 860-275-8299
sgoldman@rc.com | www.rc.com
Bio | Contact Card

Law Offices of Howard Altschuler

21 Perkins Rd.
Bethany, CT 06524
Voice: (234) 567-9897
Fax: (815) 846-1664
Website: www.legal-malpractice.com
Email: legalmalpractice@gmail.com

ADMITTED:

STATE COURTS:
CT, NJ, NY, PA

FEDERAL APPELLATE COURTS:
UNITED STATES SUPREME COURT
2ND CIR. CT. OF APPEALS
3RD CIR. CT. OF APPEALS
9TH CIR. CT. OF APPEALS

FEDERAL DISTRICT COURTS:
SOUTHERN DISTRICT OF NEW YORK
EASTERN DISTRICT OF NEW YORK
DISTRICT OF NEW JERSEY
DISTRICT OF CONNECTICUT

BANKRUPTCY COURTS
DISTRICT OF CONNECTICUT
SOUTHERN DISTRICT OF NEW YORK

New York:
281 Garth Rd.
Building C- 3D
Scarsdale, NY 10583
Please Reply to Bethany Office

CONFIDENTIAL

November 14, 2014

Anthony Nuzzo, Jr.
Nuzzo & Roberts, LLC
One Town Center
Cheshire, CT 06410
VIA EMAIL anuzzo@nuzzo-roberts.com

RE: D'Attilo Matter

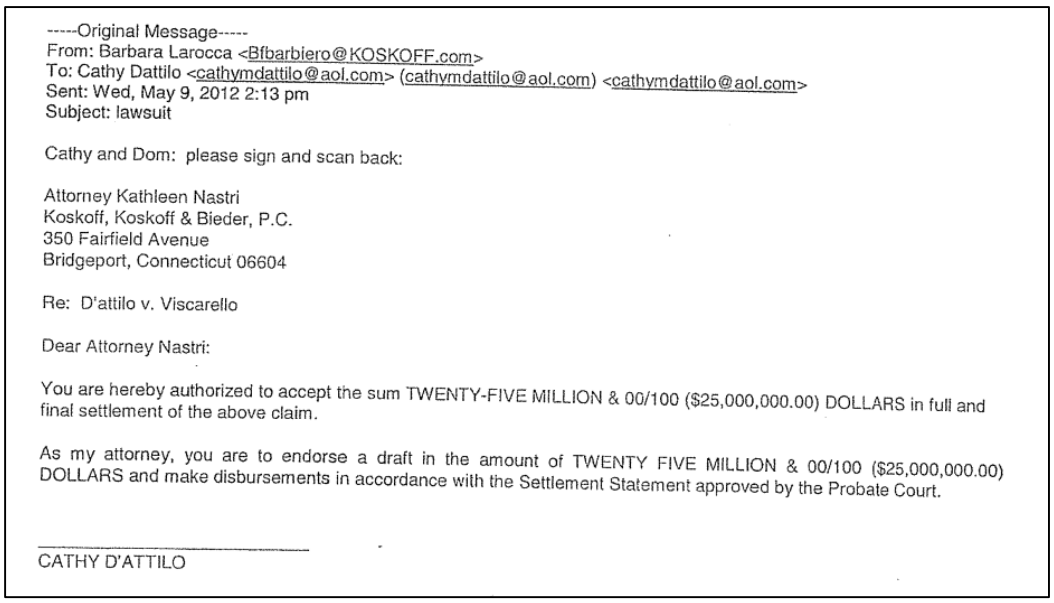
Dear Attorney Nuzzo,

I will be in touch with you shortly regarding certain substantive issues. In the meantime, I have some remaining questions regarding documents. I ask these questions and make these requests with a full reservation of rights. For convenience purposes only, I am going to italicize the specific questions and requests to make it easier for you to respond.

As you know, I am proceeding on the representation from you and your clients that everything has been turned over (other than internal memos). See below about the internal memo issue. In your July 10, 2014 letter you wrote:

> Regarding original documents, my clients have the original retainer, three consent to settle documents and the acknowledgement of receipt of settlement funds. Enclosed are color copies of the originals. As to the settlement statement, it was sent by email to Mrs. D'Attilo, signed and emailed back and therefore, my clients were never in possession of an original, signed settlement statement. My clients are also not in possession of any original trust or probate documents.

There is an email chain dated May 9, 2012 between Barbara Larocca and Cathy D'Attilo (your Bates stamped number KKBNR0056). The 2:13 PM email has text in the body of the email to authorize a settlement.



-----Original Message-----
From: Barbara Larocca <Bfbarbiero@KOSKOFF.com>
To: Cathy Dattilo <cathymdattilo@aol.com> (cathymdattilo@aol.com) <cathymdattilo@aol.com>
Sent: Wed, May 9, 2012 2:13 pm
Subject: lawsuit

Cathy and Dom: please sign and scan back:

Attorney Kathleen Nastri
Koskoff, Koskoff & Bieder, P.C.
350 Fairfield Avenue
Bridgeport, Connecticut 06604

Re: D'attilo v. Viscarello

Dear Attorney Nastri:

You are hereby authorized to accept the sum TWENTY-FIVE MILLION & 00/100 ($25,000,000.00) DOLLARS in full and final settlement of the above claim.

As my attorney, you are to endorse a draft in the amount of TWENTY FIVE MILLION & 00/100 ($25,000,000.00) DOLLARS and make disbursements in accordance with the Settlement Statement approved by the Probate Court.

_____
CATHY D'ATTILO

- *Why is an authorization to settle is being asked for on May 9, 2012, four months after the settlement was signed*?

- *Where is the signed version of that authorization*?

On that same PDF page 056, there is an email from 4:13 PM that does not indicate there is any attachment and has nothing in the body of the email other than a request to "Please sign this and scan it back". *Was there an attachment and, if so, why is it not listed in the email header*?



-----Original Message-----
From: Barbara Larocca <Bfbarbiero@KOSKOFF.com>
To: Cathy <cathymdattilo@aol.com>
Sent: Wed, May 9, 2012 4:13 pm
Subject: RE: lawsuit

Please sign this and scan it back.

From: Cathy [mailto:cathymdattilo@aol.com]
Sent: Wednesday, May 09, 2012 3:47 PM
To: Barbara Larocca
Subject: Re: lawsuit

Mrs. D'Attilo responded at 4:25 PM stating "Here is the signed settlement statement" with an indication that there was an attachment, but your file does not have any attachment enclosed.

- *Please send me a copy of the original MSG file so I can see the actual attachment* (see below).

- *Where is the original email attaching the settlement statement that you say the D'Attilos received and signed*?

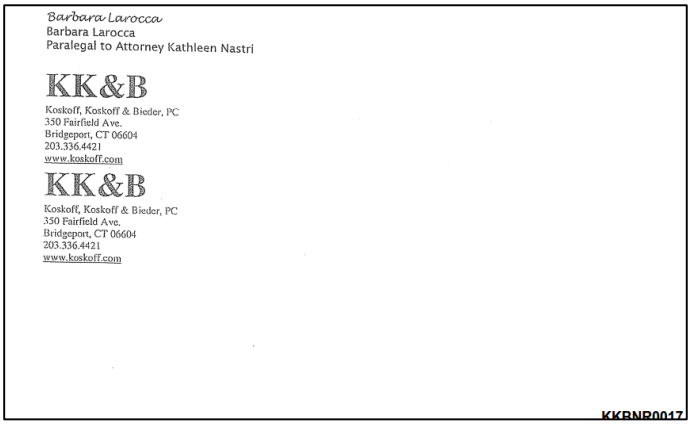
- Even if the settlement statement was signed on May 9, 2012, it was not filed until May 16, 2012 by Brad Gallant after he got an emailed copy from your clients that day. *Why wasn't the original obtained from the D'Attilos when they came to pick up their check from KKB on May 15, 2012 or why wasn't a new one signed, particularly since the filed version is literally fuzzy as well as undated*?

This brings up a broader question regarding the emails. In my July 1, 2014 letter to you I wrote:

> My concern about this is heightened by the fact that a quick review of some of the documents I received yesterday indicates to me that, in addition to the many duplicates I received, there are significant documents that were not turned over before, such as the full settlement check. (pgs. 131-137). I am also concerned because some of the emails do not have complete header information (e.g., pg. 4), no header (e.g. pgs. 8, 31) or do not start at the top of the page (e.g. pgs. 1, 4, 5-7, 13, 15) without any indication as to whether something has been redacted. Some emails have the complete header and KKB signature in Microsoft Outlook format and are printed out normally starting at the top of the page (e.g. 30-31, 160), but many do not (e.g. pgs. 1-29).

You did not respond to those concerns, but the email chain above indicates there are multiple levels of significant problems in the emails that leave the completeness of what has been provided to me in serious question. See below regarding billing documentation

For example, *could you please explain why the emails turned over have problems in their headers and in their completeness*? An email is an email, and they should all have the same printed format. There are other inconsistencies in the printed emails that lead me to believe some of the emails are incomplete, or do not include the complete email chain. For another example, the email chain on page 56 is missing the expected signature closings found on page 17:


Barbara Larocca
Barbara Larocca
Paralegal to Attorney Kathleen Nastri

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KK&B

Koskoff, Koskoff & Bieder, PC
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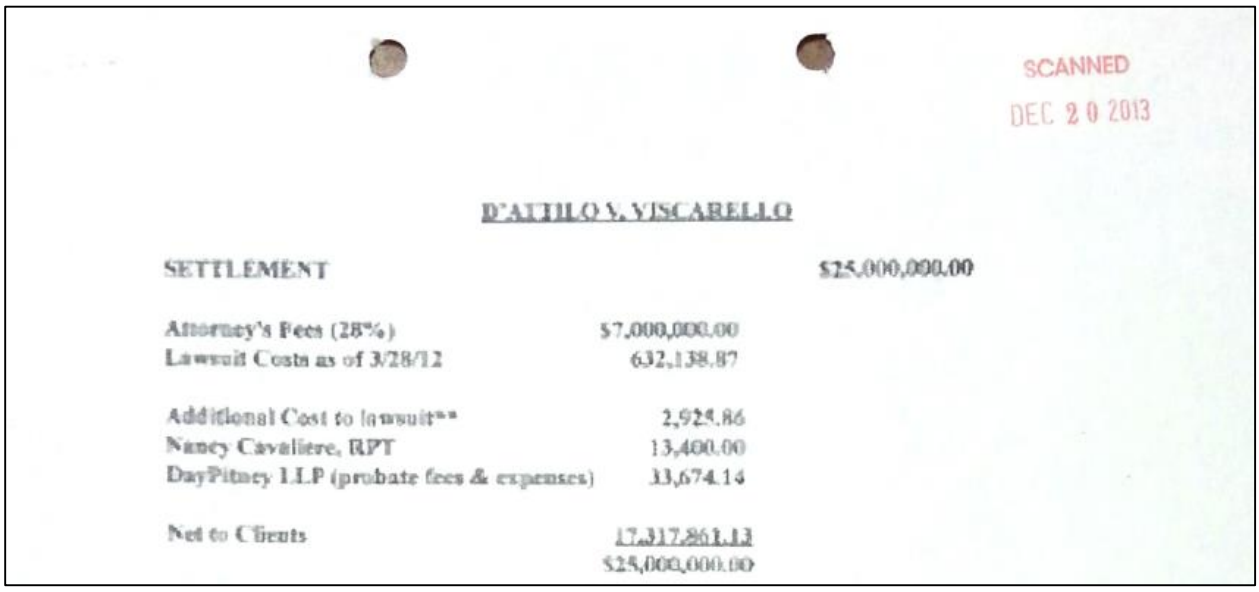
KKBNP0017

Your clients turned over a very small number of MSG files. If you are not familiar with MSG, those are the saved versions of Microsoft Outlook files, where the email is in its original form, including any attachments, and can be accessed in the original format by clicking on the file. It is the equivalent of a PDF or DOC file. I enclose one of the MSG files for your review. That particular

email indicates it was sent from copier@koskoff.com (which I assume is how scanned documents are transmitted at KKB), to Barbara Larocca, and it has the particular document scanned.

Because of the above problems, *I request getting a copy of all emails in MSG format*. That is very easy to do since you just need to find the emails, copy, and then paste them to a directory. *Please let me know when you will provide me with the actual MSG files for all emails*.

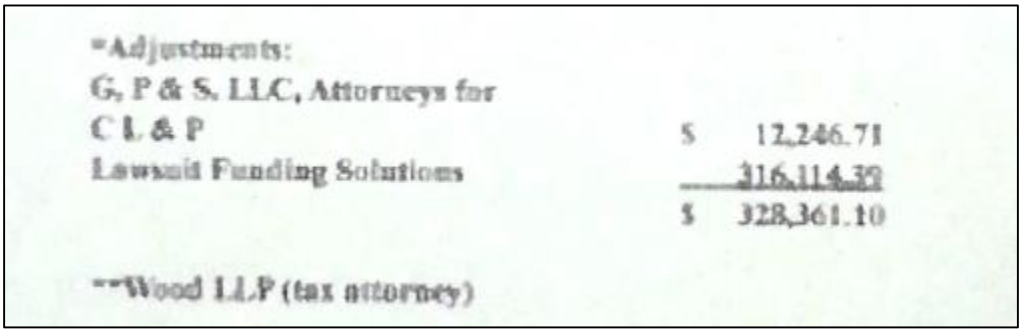
Regarding whether I have the entire file or not (other than internal memos and all emails), there is another category of documents that I have not received. The settlement statement (the one you said that was transmitted via email on May 9) submitted to the probate court states in part as follows:



SCANNED
DEC 2 0 2013

D'ATTILO V. VISCARELLO

SETTLEMENT		$25,000,000.00
Attorney's Fees (28%)	$7,000,000.00	
Lawsuit Costs as of 3/28/12	632,138.87	
Additional Cost to lawsuit**	2,925.86	
Nancy Cavaliere, RPT	13,400.00	
DayPitney LLP (probate fees & expenses)	33,674.14	
Net to Clients	17,317,861.13	
	$25,000,000.00	



*Adjustments:
G, P & S, LLC, Attorneys for
C L & P $ 12,246.71
Lawsuit Funding Solutions 316,114.39
$ 328,361.10

**Wood LLP (tax attorney)

In reviewing the files, I recall seeing only a small number of documents regarding bills received or paid. See the attached documents. I do not know if the ones that I came across (and it is possible there may be a very small number of others that I did not mark off) are a part of the $632,138.87 in lawsuit costs as of March 28, 2012. That is because there is no breakdown of what those costs are.

It appears that 99%+ of the more than $632,000 in costs are not documented. I did not even see any billing statement from Wood LLP although I did see their retainer agreement as well as their work product. While there were, no doubt, substantial costs for the litigation, there has to be

documentation for these costs. By the time you add the interest on the cash advance, and other expenses, my clients probably paid more than $700,000 in expenses, and are entitled to a full accounting, plus an explanation of why these documents were not turned over sooner. *If there are any expenses listed on the settlement statement that cannot be documented, I request that the money paid by my clients be refunded for all such undocumented expenses*.

I have consulted with several attorneys who handle these kinds of cases and all have indicated to me that it is critically important that billing documentation be preserved in a client's file. That I have not received it despite multiple representations I have a complete file is troubling.

Regarding Lawsuit Funding Solutions ("LFS"), while I'm not sure if I saw a final invoice from LFS, I did see a spreadsheet calculation which was submitted to the probate court. *If there is a final bill, please provide*.

I also want to know the nature of the relationship, if any, between KKB and LFS, for example, if KKB or any of the employees at KKB have a direct or indirect financial interest, or if KKB or any of the employees receive any kind of commission or referrals from LFS.

Regarding the internal memos: on July 1, 2014, I requested that you provide me with a privilege log or the equivalent of documents that you withheld:

> I assume there are internal notes that you have not turned over though you did not mention this in your letter to me. If you have withheld any documents (paper, electronic or otherwise), please provide a privilege log describing the documents, the number o f pages of each document, and the dates. Please also provide the specific legal ground for withholding these documents when requested by clients who paid their legal fees and expenses in full, and, secondly, whether it is your position that these documents would not have to be turned over during the course of litigation (and the basis of your position).

You never responded to that request. I want to reiterate that I believe the withholding of these documents is not justified under the circumstances since there would be no legal basis to withhold them during the course of litigation. The issue is even more important now since it appears your clients have not turned over their entire file as they previously represented.

If you are not going to turn over these internal documents, please let me know whether you are going to provide me a description of the documents as requested. If not, I will have to pursue this issue in another forum.

Please let me know if you have any questions.

Sincerely yours,

Howard Altschuler, Esq.

Bill Bloss

From: Bill Bloss
Sent: Thursday, March 15, 2012 7:22 PM
To: Robert Wood
Cc: Kathleen Nastri; ogden@WoodLLP.com
Subject: RE: Daniel D'Attilo et al. v. Richard Viscarello, M.D., et al.

Robert: I can respond to one question but will talk to Kathleen about the others and get back to you. The insurer conceded that the defendant/insured would have offer of judgment interest added to the verdict against the defendant/insured. It did not concede that the insurer would be required to pay any amount of offer of judgment interest under the terms of the policy; it continued to contest that. Bill

---

From: Robert Wood [wood@woodllp.com]
Sent: Thursday, March 15, 2012 4:51 PM
To: Bill Bloss
Cc: Kathleen Nastri; ogden@WoodLLP.com
Subject: RE: Daniel D'Attilo et al. v. Richard Viscarello, M.D., et al.

Bill:

Thank you for your email and the additional documents you forwarded February 29th. I apologize for taking so long to respond. I have reviewed them and still believe we are on the right track.

Thus, I think we could legitimately argue that the settlement is 100% for physical injuries and fully excludable from gross income. Conversely, I suppose the IRS could conceivably argue that all payments beyond $2 million represent taxable interest. I think our arguments are better than the IRS arguments, but there is clearly some uncertainty. There could be wide potential swings in the figures.

Of course, some of the issue will hinge on the final form of the settlement agreement and the language we include within it. On that point, are you abrogating the January 12, 2012 settlement agreement, amending it, or drafting a supplement? I made suggestions in my February 16, 2012 email. I continue to have serious concerns about the signed agreement and the extent to which it prejudices our tax position.

If we were writing on a clean slate in a new settlement agreement (which would be my preference), I still believe that a compromise of some interest in the settlement agreement is the most prudent approach. As you have detailed, the parties have made arguments about the different exposures and different amounts. I will probably suggest a number of recitals in the settlement agreement about the nature of the disputes and the respective positions, all culminating in a global settlement figure of which a stated amount will be interest.

I continue to believe that even though we could argue for a "no interest" settlement, an allocated amount of stated interest (that all parties agree is the liquidated interest figure) would be preferable. I do not yet have a figure in mind. I intend to fiddle with the numbers, theories and interest rates to try to produce one or more figures to present with a rationale.

Any ideas or suggestions for figures, theories, etc. are welcome. Unless I have misread it, it appears [redacted] (which is funding the settlement proceeds?) appears to have conceded in its Mediation Statement that, if the verdict withstood appellate challenge, it would owe 12% statutory interest on $2M of damages. If I am correct, perhaps the resulting figure could be one logical stated interest amount.

If you or your clients have questions about any of this, please let me know. I would feel more comfortable knowing how the signed January 12, 2012 settlement agreement will be addressed, so please let me know about that when you can. Thanks.

Regards,

Rob

Robert W. Wood
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STATE OF CONNECTICUT
JUDICIAL BRANCH

STAMFORD/NORWALK JUDICIAL DISTRICT
GRIEVANCE PANEL

Eugene J. Riccio, *Grievance Counsel*

P.O. Box 9118
Bridgeport, CT 06601
(203) 367-7440

August 26, 2015

Mark A. Dubois, Esq.
Geraghty & Bonnano, LLC
38 Granite Street
P.O. Box 231
New London, CT 06320

Re: *D'Attilo vs. Gallant*
Grievance Complaint #: 15-0142
D'Attilo vs. Iannantuoni
Grievance Complaint #: 15-0143

Dear Attorney Dubois,

Enclosed is your July 28th submission to the Stamford/Norwalk Grievance Panel. It was not considered by the Panel. Thank you.

Very truly yours,

Eugene J. Riccio
Counsel to the Panel

EJR:cew
cc: Howard Altschuler, Esq. ✓
Stamford/Norwalk Grievance Panel

STATE OF CONNECTICUT
JUDICIAL BRANCH

STAMFORD/NORWALK JUDICIAL DISTRICT
GRIEVANCE PANEL
Eugene J. Riccio, *Grievance Counsel*

P.O. Box 9118
Bridgeport, CT 06601
(203) 367-7440

August 26, 2015

Ms. Cathy M. D'Attilo, et al
c/o Howard Altschuler, Esq.
21 Perkins Road
Bethany, CT 06524

Re: D'Attilo v. Gallant
Grievance Complaint #15-0142
Grievance Panel Dismissal

Dear Ms. D'Attilo:

Pursuant to Connecticut Practice Book §2-32, the Grievance Panel for the Judicial District of Stamford/Norwalk ("Panel") completed its investigation and, at its meeting on August 12, 2015, determined that no probable cause exists to believe that the attorney as above-referenced is guilty of misconduct as alleged in your Complaint. The Panel determined that an Investigatory Hearing was not required to reach that conclusion and accordingly, made its findings based upon the documents received from you as the Complainants dated February 17, 2015, June 12, 2015, July 24, 2015, and from Keith B. Gallant, Esq., dated May 29, 2015, as the Respondent.

The Complaint revealed that:

1. The Complainants' son sustained severe and permanent injuries during the delivery process.

2. The Complainants retained the firm of Koskoff, Koskoff and Bieder ("Koskoff"), to pursue a medical malpractice claim in March, 2003. The written retainer called for a legal fee in accord with the terms of Connecticut General Statutes §52-251c. An attempt by Koskoff to modify this retainer to provide for a significantly larger legal fee in early January, 2012 was rebuffed by the Complainants.

3. After protracted litigation, the matter was resolved in January, 2012 for the sum of 25 million dollars.

4. Probate Court proceedings were initiated by Koskoff in January, 2012, in the Norwalk Probate Court. An Application to Compromise Doubtful and Disputed Claim or Action and a Settlement Cost Statement, were submitted to the Probate Court by Koskoff on or about January 12, 2012.

5. The Respondent and his firm were retained by the Complainants on February 12, 2012, for the guardianship proceeding and preparation of a trust for the child in the probate court matter.

6. In December, 2014, subsequent to the formal resolution of the litigation and the conclusion of the related probate court proceedings involving the Respondent, litigation was commenced by the Complainants against Koskoff, the Respondent and his firm regarding their handling of this matter. The main allegation being that Koskoff had taken a 7 million dollar legal fee when, by the terms of their March, 2003 retainer agreement, they were only entitled to 2.6 million dollars in fees.

7. This Grievance Complaint followed in February, 2015.

8. In summary, the Complainants assert the following allegations against the Respondent:

(a) He failed to discern and challenge Koskoff in charging the Complainants a fee which was not in compliance with the terms of their March, 2003 retainer with the Complainants;

(b) He conspired with Koskoff to improperly induce the Complainant and her family to relocate to Bethel, Connecticut solely to avoid the heightened scrutiny of the Norwalk Probate Court and the GAL, Attorney Colleen Fries with regard to the settlement of the litigation including the legal fees claimed by Koskoff;

(c) He incompetently prepared trust and estate planning documents to the detriment of his clients;

(d) His multiple roles as trustee of the child's trust and counsel for the Complainants in the probate matter constituted a concurrent conflict of interest;

(e) He improperly closed the child's estate to transfer all funds to said trust for the sole purpose of obtaining total control over the child's assets;

(f) His legal fees for the services performed for the Complainants were grossly excessive;

(g) He improperly discharged his duties as fiduciary of the trust and initially refused to resign as requested by the Complainants.

In response, the Respondent denies the allegations and states that:

(a) He was not professionally obligated to discover and address the issue of legal fees, in light of the fact that, it dealt with the Complainants' relationship with Koskoff, the initial Settlement Agreement and Application to Compromise were already prepared, executed and filed prior to the Respondent's appearance without objection by the Complainants, the scope of the retainer agreements with the Complainants, and the Respondent's lack of knowledge of Koskoff's unilateral attempt in January, 2012 to modify the 2003 retainer;

(b) He did not conspire with Koskoff to re-locate the Complainants to Bethel, asserting that the Complainants expressed a desire to move in their first conversation with the Respondent given the publicity surrounding the settlement, and the Respondent properly advised the Complainants that the Norwalk Probate Court and Attorney Fries would not look favorably on the Complaints' request for substantial funds for themselves and considerable discretion in spending trust money;

(c) The trust and estate planning documents were properly prepared by the Respondent in compliance with applicable law and appropriate for their intended purposes as discussed with his clients;

(d) The Respondent's representation of all three parties as well as being designated trustee of the child's trust did not constitute a concurrent conflict of interest given that the Complainants' concern was the well-being of their child and further, the actions taken by the Respondent were subject to, and approved by, the Probate Court, District of Northern Fairfield County ("Probate Court");

(e) It is standard procedure to terminate the guardianship of a minor's estate when all assets have been transferred to a trust, a development which was subject to, and approved by the Probate Court;

(f) The legal fees charged by the Respondent and his firm were reasonable in light of the amount of services performed, consistent with the letters of engagement dated February 10, 2012, April 2, 2012, May 4, 2012 and were subject to, and approved by, the Probate Court;

(g) The Respondent's resignation as fiduciary, as well as the accountings prepared and fees charged by him were approved by the Probate Court after a hearing in August, 2013, absent objection by the Complainants who were present and represented by counsel.

The Grievance Panel carefully reviewed the matter, including all documents submitted by the Complainant and the Respondent. All of the Rules of Professional Conduct were considered by the Panel in rendering its decision and, in particular: Rules 1.1; 1.4; 1.7; 1.15; 3.3, 5.1; 8.3; 8.4(3,4).

The Grievance Panel found that, under the facts presently set forth in this Complaint and Response:

(a) The Respondent was not, under the circumstances, required to discern and address the discrepancy between the fees Koskoff charged the Complainants versus those authorized by the March, 2003 retainer agreement;

(b) The Respondent did not conspire with Koskoff or improperly encourage the Complainants to move from Norwalk for the purpose of evading review of the settlement by the Norwalk Probate Court and Attorney Fries and thus facilitating Koskoff's efforts to receive legal fees they were not entitled to under the terms of their retainer with the Complainants;

(c) The trust and estate planning documents were competently prepared by the Respondent and consistent with the needs of his clients;

(d) The representation of the Complainants by the Respondent in these matters and his role as a fiduciary did not, under these circumstances, constitute a concurrent conflict of interest;

(e) The termination of the guardianship and the transfer of assets to said trust was not improper, and furthermore was subject to, and approved by, the Probate Court;

(f) The legal fees charged by the Respondent, considering the nature and scope of the services, were not unreasonable and were subject to, and approved by, the Probate Court;

(g) The Respondent competently discharged his fiduciary duties and properly resigned his position, both of which were subject to, and approved by, the Probate Court.

Based upon the foregoing, the Panel concluded at its meeting on August 12, 2015, that there is no probable cause to find that the Respondent is guilty of misconduct and dismissed the Complaint.

The dismissal of this Complaint is a final determination and no further action will be taken by any disciplinary authorities.

Very truly yours,

Eugene J. Riccio, Esq.
Counsel to the Panel

EJR:cew
cc: Mark A. Dubois, Esq.

STATE OF CONNECTICUT
JUDICIAL BRANCH

STAMFORD/NORWALK JUDICIAL DISTRICT
GRIEVANCE PANEL
Eugene J. Riccio, *Grievance Counsel*

P.O. Box 9118
Bridgeport, CT 06601
(203) 367-7440

August 26, 2015

Ms. Cathy M. D'Attilo, et al
c/o Howard Altschuler, Esq.
21 Perkins Road
Bethany, CT 06524

Re: D'Attilo v. Iannantuoni
Grievance Complaint #15-0143
Grievance Panel Dismissal

Dear Ms. D'Attilo:

Pursuant to Connecticut Practice Book §2-32, the Grievance Panel for the Judicial District of Stamford/Norwalk ("Panel") completed its investigation and, at its meeting on August 12, 2015, determined that no probable cause exists to believe that the attorney as above-referenced is guilty of misconduct as alleged in your Complaint. The Panel determined that an Investigatory Hearing was not required to reach that conclusion and accordingly, made its findings based upon the documents received from you as the Complainants dated February 17, 2015, June 12, 2015, July 24, 2015, and from Rebecca Iannantuoni, Esq., dated May 29, 2015, as the Respondent.

The Complaint revealed that:

1. The Complainants' son sustained severe and permanent injuries during the delivery process.

2. The Complainants retained the firm of Koskoff, Koskoff and Bieder ("Koskoff"), to pursue a medical malpractice claim in March, 2003. The written retainer called for a legal fee in accord with the terms of Connecticut General Statutes §52-251c. An attempt by Koskoff to modify this retainer to provide for a significantly larger legal fee in early January, 2012 was rebuffed by the Complainants.

3. After protracted litigation, the matter was resolved in January, 2012 for the sum of 25 million dollars.

4. Probate Court proceedings were initiated by Koskoff in January, 2012, in the Norwalk Probate Court. An Application to Compromise Doubtful and Disputed Claim or Action and a Settlement Cost Statement, were submitted to the Probate Court by Koskoff on or about January 12, 2012.

5. The Respondent and her firm were retained by the Complainants on February 12, 2012, for the guardianship proceeding and preparation of a trust for the child in the probate court matter.

6. In December, 2014, subsequent to the formal resolution of the litigation and the conclusion of the related probate court proceedings involving the Respondent, litigation was commenced by the Complainants against Koskoff, the Respondent and her firm regarding their handling of this matter. The main allegation being that Koskoff had taken a 7 million dollar legal fee when, by the terms of their March, 2003 retainer agreement, they were only entitled to 2.6 million dollars in fees.

7. This Grievance Complaint followed in February, 2015.

8. In summary, the Complainants assert the following allegations against the Respondent:

(a) She failed to discern and challenge Koskoff in charging the Complainants a fee which was not in compliance with the terms of their March, 2003 retainer with the Complainants;

(b) She conspired with Koskoff to improperly induce the Complainant and her family to relocate to Bethel, Connecticut solely to avoid the heightened scrutiny of the Norwalk Probate Court and the GAL, Attorney Colleen Fries with regard to the settlement of the litigation including the legal fees claimed by Koskoff;

(c) She incompetently prepared trust and estate planning documents to the detriment of her clients;

(d) Attorney Keith Bradoc Gallant's multiple roles as trustee of the child's trust and counsel for the Complainants along with the Respondent in the probate matter constituted a concurrent conflict of interest;

(e) She improperly closed the child's estate to transfer all funds to said trust for the sole purpose of obtaining total control over the child's assets;

(f) Her legal fees for the services performed for the Complainants were grossly excessive.

In response, the Respondent denies the allegations and states that:

(a) She was not professionally obligated to discover and address the issue of legal fees, in light of the fact that, it dealt with the Complainants' relationship with Koskoff, the initial Settlement Agreement and Application to Compromise were already prepared, executed and filed prior to the Respondent's appearance without objection by the Complainants, the scope of the retainer agreements with the Complainants and the Respondent's lack of knowledge of Koskoff's unilateral attempt in January, 2012 to modify the 2003 retainer;

(b) She did not conspire with Koskoff to re-locate the Complainants to Bethel, asserting that the Complainants expressed a desire to move in their first conversation with Attorney Gallant given the publicity surrounding the settlement, and Attorney Gallant properly advised the Complainants that the Norwalk Probate Court and Attorney Fries would not look favorably on the Complaints' request for substantial funds for themselves and considerable discretion in spending trust money;

(c) The trust and estate planning documents were properly prepared by the Respondent in compliance with applicable law and appropriate for their intended purposes as discussed with her clients;

(d) Attorney Gallant's representation of all three parties along with the Respondent as well as Attorney Gallant being designated trustee of the child's trust did not constitute a concurrent conflict of interest given that the Complainants' concern was the well-being of their child and further, the actions taken by the Respondent were subject to, and approved by, the Probate Court, District of Northern Fairfield County ("Probate Court");

(e) It is standard procedure to terminate the guardianship of a minor's estate when all assets have been transferred to a trust, a development which was subject to, and approved by the Probate Court;

(f) The legal fees charged by the Respondent and her firm were reasonable in light of the amount of services performed, consistent with the letters of engagement dated February 10, 2012, April 2, 2012, May 4, 2012 and were subject to, and approved by, the Probate Court.

The Grievance Panel carefully reviewed the matter, including all documents submitted by the Complainant and the Respondent. All of the Rules of Professional Conduct were considered by the Panel in rendering its decision and, in particular: Rules 1.1; 1.4; 1.7; 1.15; 3.3, 5.2; 8.3; 8.4(3,4).

The Grievance Panel found that, under the facts presently set forth in this Complaint and Response:

(a) The Respondent was not, under the circumstances, required to discern and address the discrepancy between the fees Koskoff charged the Complainants versus those authorized by the March, 2003 retainer agreement;

(b) The Respondent did not conspire with Koskoff or improperly encourage the Complainants to move from Norwalk for the purpose of evading review of the settlement by the Norwalk Probate Court and Attorney Fries and thus facilitating Koskoff's efforts to receive legal fees they were not entitled to under the terms of their retainer with the Complainants;

(c) The trust and estate planning documents were competently prepared by the Respondent and consistent with the needs of her clients;

(d) The representation of the Complainants by the Respondent and Attorney Gallant in these matters and Attorney Gallant's role as a fiduciary did not, under these circumstances, constitute a concurrent conflict of interest;

(e) The termination of the guardianship and the transfer of assets to said trust was not improper, and furthermore was subject to, and approved by, the Probate Court;

(f) The legal fees charged by the Respondent, considering the nature and scope of the services, were not unreasonable and were subject to, and approved by, the Probate Court.

Based upon the foregoing, the Panel concluded at its meeting on August 12, 2015, that there is no probable cause to find that the Respondent is guilty of misconduct and dismissed the Complaint.

The dismissal of this Complaint is a final determination and no further action will be taken by any disciplinary authorities.

Very truly yours,

Eugene J. Riccio, Esq.
Counsel to the Panel

EJR:cew
cc: Mark A. Dubois, Esq.

Howard Altschuler

From: Howard Altschuler <legalmalpractice@gmail.com>
Sent: Friday, September 18, 2015 1:23 PM
To: 'Karyl.Carrasquilla@jud.ct.gov'
Subject: Koskoff/Nastri

Hi Attorney Carrasquilla,

When you have a chance please call regarding the status of the internal email documents requested from KKB, and where things stand in the process.

Thanks very much,

Howard Altschuler
203-467-5577

Law Offices of Howard Altschuler

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Bethany, CT 06524
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ADMITTED:

STATE COURTS:
CT, NJ, NY, PA

FEDERAL APPELLATE COURTS:
UNITED STATES SUPREME COURT
2ND CIR. CT. OF APPEALS
3RD CIR. CT. OF APPEALS
9TH CIR. CT. OF APPEALS

FEDERAL TRIAL COURTS:
SOUTHERN DISTRICT OF NEW YORK
EASTERN DISTRICT OF NEW YORK
DISTRICT OF CONNECTICUT
DISTRICT OF NEW JERSEY

FEDERAL BANKRUPTCY COURTS:
DISTRICT OF CONNECTICUT
SOUTHERN DISTRICT OF NEW YORK

New York Office:
281 Garth Rd.
Building C- 3D
Scarsdale, NY 10583
Please Reply to Bethany Office

September 30, 2015

Karyl L. Carrasquilla, Esq.
Chief Disciplinary Counsel
Office of Chief Disciplinary Counsel
100 Washington Street, Hartford, CT 06106
Via Email Karyl.Carrasquilla@jud.ct.gov

Dear Attorney Carrasquilla:

This is in follow-up to our brief phone conversation on Friday as well as my August 24, 2015 email to you with attached documents (PDF pgs. 1-50). I enclose the information you requested as well some additional comments, questions, and some more documents (PDF pgs. 51-107). Please let me know if I can provide any other information. If easier for you, I am willing to meet with you at your office in Hartford to go over documents or the chronology of events in any detail that you require.

I: KKB BILLING FOR COSTS:

It was my understanding from you that KKB still has not turned over any original billing documents, but only gave you a second copy of the computer printout which they had already turned over. I did not have a chance to ask you if Attorney Nuzzo addressed any of the billing issues that I flagged in my August 24 letter to you. For example, I was wondering if KKB had a specific response to the documentary evidence regarding Mr. Foreman. As I noted, Mr. Foreman testified under oath during the medical malpractice trial in May 2011 that he expected his total expert fees were going to be $20,000 to $25,000. (See PDF 22-23 of the August 24 PDF file enclosed). Yet, the May 2012 *computer* printout only has a *handwritten* entry of $68,712.92 for Mr. Foreman's total fees (PDF 24-25). $68,712.92 is the amount that KKB deducted from the D'Attilos' medical malpractice settlement funds, inexplicably three times as much as Mr. Foreman testified would be due to him.

Clients should not have to go through an obstacle course over a period of years to double check the accuracy or legitimacy of $632,000+ in legal expenses. If it were not for the fact that I made multiple demands for documentation over a period of many months, KKB never would have ultimately admitted to overcharging at least $1,636.59 (PDF 8), an overcharge it did not inform the grievance panel about. Instead, in its incomplete grievance reply on the issue of costs, the respondents misleadingly claim that the "KKB staff reconstructed 100% of the backup for the cost and expenses". KKB grievance reply pg. 29 (KGR 29). Unfortunately, there are many other unanswered questions remaining.

II.A: "INTERNAL DOCUMENTS" AND EMAILS:

In follow-up to my August 24, 2015 email to you regarding the so-called "internal documents" and emails, I hope that the KKB respondents are not delaying turning them over or making any claim that producing them would be difficult. As I explained on Friday, these documents were separated out by the Koskoff firm more than a year ago when they were sent to the Nuzzo firm for review. *See, e.g.*, page 38 of the PDF file I sent you on August 24 (which is a letter from Anthony Nuzzo to me dated July 15, 2014 indicating this, enclosed via mail). *See also* a copy of correspondence from Jim Horwitz to me dated June 11, 2014. PDF 51 (which is the first page of enclosed PDF file).

It should have only taken Mr. Nuzzo a few minutes to provide these documents to you in PDF format. I want to reiterate what I wrote on August 24, 2015: respondents have selectively withheld certain documents which they only describe as internal. The respondents make no claim that these internal documents are attorney work product. In fact, any documents related to the March 21, 2003 retainer agreement, the contingency fee, billing records, Mark Greany, the 2005 amendment, the January 2012 settlement authorizations, the move from Norwalk to Bethel, etc., would not be attorney work product because they would have nothing to do with the underlying medical malpractice case. Moreover, if there had been any privilege attached to those documents, the privilege was waived by KKB turning over some of those internal documents to me more than a year ago and others to the grievance panel.

Though you may not have direct subpoena power for documents, you are certainly permitted to request documents as you have already done and you could take a refusal to provide such documents into account. It was my understanding from our meeting that you were going to request billing documents and emails. In my follow-up August 24 email to you, I suggested that you request all the internal documents not just emails because they may include important information related to your investigation. I outlined some of the reasons in that email as to why I thought asking for all of those documents was important.

These internal documents include "emails, memos, raw research, etc." (PDF 38) and are important both for what they may or may not include. For example, the respondents have taken a position in the civil litigation that is incompatible with the position they are taking in the grievance. I touched upon some of these irreconcilable contradictions when we met, as well as in my June 15, 2015 letter that I sent to Steven Kulas (a copy of which is in your file). I provided paper printouts to you of some of these documents, which I now include in the enclosed PDF as well. PDF pgs. 52-67.

To give one dramatic example, the respondents' entire grievance defense is based solely on the claim that the 28% contingency fee provision of the March 21, 2003 agreement was "triggered" by the 2005 waiver provision amendment to the fee cap statute. Put another way, the respondents agree that but for the 2005 amendment, they would **not** have been entitled to the 28%. For example, in their grievance reply, footnote 7, the Koskoff respondents write:

[7] As will be discussed below, the 2005 version is only relevant to the extent that it was the 2005 version of the statute specifically allowing for a waiver of fees that triggered KKB's fee under the fee agreement.

It would be an understatement to say that the 2005 amendment, therefore, is essential to the respondents' grievance defense. Without the 2005 amendment, by their own admission in the grievance process, the Koskoff firm would have only been able to calculate contingency fees based upon the statutory tier as set forth in the March 21, 2003 retainer agreement.

The respondents declared to the grievance panel that they had "no doubt" that the 2005 amendment triggered the 28% provision of the 2003 retainer agreement. KGR 10. Yet, in the civil litigation, the respondents took the starkly opposite position that "the 2005 version of §52-251c . . . **does not apply to the retainer agreement alleged in the complaint**". KKB went so far as to request that the court order "**the deletion of all references to the 2005 version of §52-251c**" from the complaint (PDF 57).

Count Five is entitled "Contingency Fee Recovery as Per §52-251c(g)" and claims that the legal fees recovered by the Koskoff defendants are subject to recovery pursuant to this statute. In the First Requested Revision, the defendants seek the deletion of all references to the 2005 version of §52-251c as it does not apply to the retainer agreement alleged in the Complaint. Notwithstanding this, there is no provision in any

- 11 -

In multiple papers submitted during the civil case KKB repeated the contention that the 2005 Amendment did not apply to the 2003 retainer agreement. Perhaps the most dramatic example of this is found in KKB's motion to stay reply. (PDF 60). In the following excerpt, KKB not only states unequivocally that "the 2005 version of § 52-251c . . . is not applicable to the 2003 retainer agreement" (in direct contradiction to their grievance position), **KKB does so specifically in reference to the waiver provision that the defendants now claim was the trigger for 28%:**

Notwithstanding, given this dominate argument in their objection, which they claim completely bars arbitration, a brief response as to the merits is warranted. KK&B contends that the plaintiffs' claims are factually inaccurate and legally unfounded. First, the plaintiffs ignore that portion of the retainer agreement, which states "[i]f that statute is not in effect at the time money is to be distributed to the Client, K K & B shall receive fees of twenty-eight (28%) of the total recovered." (Ex. A to mot. stay memo.).

Second, the plaintiffs also cite to the 2005 version of § 52-251c, which is not applicable to the 2003 retainer agreement. They rely on 52-251(c)(e), which provides that in order for a client to waive the fee schedule in § 52-251c(b), the client must execute a specific, conspicuous waiver of rights. They also rely on § 52-251c(g), which

For another example, in KKB's February 20, 2015 Motion to Stay reply, KKB writes (PDF 59):

> The plaintiffs challenge the enforceability of the arbitration agreement based on the contingency fee scale set forth in General Statutes § 52-251c, but wrongfully omit that they agreed to opt out of the statutory fee limitation. Additionally, the plaintiffs repeatedly cite to a later version of General Statutes § 52-251c, which on its face has no application to this case. What is before this court is whether most of the claims should be

Once again in the civil case, KKB unequivocally stated that the "**later version** of general statutes § 52-251C . . . **on its face has no application to this case**" in direct contradiction to its grievance claim. As noted, KKB now claims that the 2005 waiver provision "trigger" was worth $4.3 million.

The respondents' entire grievance defense is based on the claim that the waiver of rights requirement of the 2005 Amendment triggered their entitlement to an additional $4.3 million and that they believed that to be true **at all times** (so they did not intentionally defraud the D'Attilos). I do not know if you asked Mr. Nuzzo to have his clients explain these glaring contradictions. However, these contradictions bring the case back full circle to the March 21, 2003 retainer agreement which states unambiguously (PDF 68-69):

> II. **FEES** - Pursuant to statute, K K & B shall receive fees of 33 1/3% of the first $300,000.00, 25% of the next $300,000.00, 20% of the next $300,000.00, 15% of the next $300,000.00, and 10% of any amount in excess of $1,200,000.00 of the total recovered, whether by way of settlement or award, before deduction of liens, costs and expenses. If that statute is not in effect at the time money is to be distributed to the Client, K K & B shall receive fees of twenty-eight percent (28%) of the total recovered. The Client authorizes K K & B to deduct said fees, liens, costs and expenses out of monies received from said party or parties. If all or any part of the settlement or award is to be paid in installments (a "structured settlement") the fee shall be based upon the present cost of such settlement or award; all fees, liens, costs and expenses shall be paid from the first monies received.

According to KKB's grievance reply, Kathleen Nastri claimed that she (and Jim Horwitz) believed until November 2011 that the contingency fee was 33 1/3%. They believed this through multiple years of settlement discussions and two full medical malpractice trials. Nastri had been assigned to the case in early 2005, and Horwitz in the fall of 2008. KGR 10. As they wrote in their grievance reply:

> In connection with the ongoing settlement discussions and with the knowledge that the case would likely resolve at the next mediation session, Attorney Nastri and Attorney Horwitz had discussions with the D'Attilos about settlement numbers and again what they would receive after costs and attorney's fees were paid. Sometime before November 29th Attorney Nastri and Mrs. D'Attilo discussed the terms of the fee agreement. Both Attorney Nastri and Attorney Horwitz had been under the impression that KKB's fee was 1/3 based on KKB's prior practice for medical malpractice cases and in fact, whenever they discussed settlement with the D'Attilos, Attorney Nastri and Attorney Horwitz always referred to their fee as being 1/3.

As we discussed when we met, this assertion that Nastri and Horwitz "always referred to their fee as being 1/3" whenever they discussed settlement with the D'Attilos is demonstrably false (for example, the 2006 letter to the D'Attilos regarding the offer of judgment had no reference to the contingency fee). In fact there is not a single document turned over to me where there was any mention of the contingency fee (other than the February 2003 draft retainer agreement which included the waiver

provision, the agreed-upon March 21, 2003 retainer agreement without the waiver provision, and the settlement authorizations starting in January 2012). Are there any internal documents with such references?

On November 22, 2011 there was a firm offer on the table from the insurance company for $18 million. (KGR 14). In the November 29, 2011 email, Kathleen Nastri told her legal partners that Nastri had told Cathy D'Attilo "they had negotiated a 28% fee, which would save Danny close to $1 million if the case settled for $18 million." Notably, Kathleen Nastri mentions nothing in her email about Mark Greany negotiating a 28% fee, and nothing about the 2005 amendment triggering the 28%, despite the fact that this email went out to a number of her partners

If the fee had been 33 1/3%, KKB would have been entitled to **$5,994,000** in legal fees. A 28% contingency fee would have entitled KKB to **$5,040,000**, or $954,000 less than the fee would be for 33 1/3%, almost a $1 million loss to KKB over its purported normal retainer agreements.

As KKB admits in its grievance reply (pg. 9):

> Although the agreement between Attorney Koskoff and Attorney Greany was that if § 52-251c were amended to include a waiver provision, the fee would be 28%, admittedly the fee agreement does not specifically spell this out. However, a fee agreement must be construed

No one, including the KKB respondents, could read the March 21, 2003 agreement and conclude that 28% was the appropriate contingency fee. By its own black and white terms, 28% would apply *only* if the fee statute was no longer in effect. At a minimum, it would require research to see whether the fee statute was in effect. Is there any such internal research in the KKB file?

Are there internal documents where Kathleen Nastri also does the math for the statutory tier? If so, she would have also calculated that the statutory tier permitted legal fees of $280,000 for the first $1.2 million. The remaining $16.8 million would have resulted in $1,680,000 in contingency fees, for a total of **$1,960,000** in legal fees, had the case settled for $18 million. This would have earned KKB **$3,080,000 less in fees** than the 28% calculation.

Of those three numbers, $1,960,000, $5,040,000, and $5,994,000, only one of them was justifiable by the plain language of the March 21, 2003 agreement. However, Kathleen Nastri said nothing about this to Cathy D'Attilo. This was not merely a million-dollar question, comparing 33 1/3% to 28%, but a $3 million question as to whether the language of the retainer agreement permitted anything other than the statutory tier.

According to KKB, even after Cathy D'Attilo received the alleged explanation on November 29, 2011:

> The D'Attilos continued to have questions about the fee agreement, which they discussed in additional conversations with Attorney Nastri between November 29th and January 4th, prior to the last mediation session scheduled for January 11th.

What were the questions? KKB does not say. What were the answers? KKB does not say. Are there internal documents addressing these questions and answers? The only possible basis for earning a 28% contingency fee would be establishing that the fee statute was not in force at the time the funds were

distributed in May 2012. Mr. Nuzzo mentions that research is a part of the internal documents. Did anyone at KKB do any legal research on this issue? If KKB had done research they would have come across *LeConche v. Elligers*, 215 Conn. 701 (1990). PDF 97-103. This case definitively establishes that an amendment to the fee statute did not negate obligations that existed under an earlier version, that is, the older version **remained in effect** except as amended. The crucial provision remaining in effect after the 2005 amendment is the statutory tier. The 2005 amendment merely codified the ruling in the *Salerno* case (PDF 104-107), the case that Michael Koskoff claimed he mentioned to Mark Greany, the same case that Greany allegedly expressed concern that it would not protect KKB from a challenge to a waiver provision, the same case that Michael Koskoff neglected to write down in his contemporaneous notes of that phone conversation.

That brings us back to internal documents: Kathleen Nastri sends this particular email on November 29, 2011. Is it believable that not one single lawyer receiving that email had a question that found its way into an email or memo? For example, for years Jim Horwitz had allegedly believed that the D'Attilos' retainer agreement called for 33 1/3% contingency fee. Though presumably he also looked at the retainer agreement at around the same time that Kathleen Nastri did, the KKB grievance reply does not allege any facts as to his reaction or what he did or said. When Kathleen Nastri wrote to her partners that the D'Attilos would be saving $1 million, that also meant that KKB would be losing $1 million. Were none of those attorneys curious as to why the D'Attilos did not have the standard agreement? On the other hand, as I mentioned in my previous correspondence, there are a number of unexplained redactions in emails turned over to the grievance committee, which may shed some light on some of these questions.

As noted, the lack of any other communication on this issue is all the more remarkable given the admission in the KKB grievance reply:

> Although the agreement between Attorney Koskoff and Attorney Greany was that if § 52-251c were amended to include a waiver provision, the fee would be 28%, admittedly the fee agreement does not specifically spell this out. However, a fee agreement must be construed

If Nastri, Bloss, Horwitz, Michael and Joshua Koskoff were intending to deduct 28% despite the language of the retainer agreement which did not spell out or authorize a 28% fee, they had an ethical obligation to inform their clients the D'Attilos that the March 21, 2003 "agreement does not specifically spell this out." Instead, the KKB respondents fraudulently conspired to tell the D'Attilos they had negotiated for 28% and that as a result Danny would be saving $1 million in legal fees. In reality the 28% was $3 million more in legal fees that permitted by the retainer agreement.

Yet, Nastri claimed in the grievance response that on January 4, 2012, as final settlement talks approached, she wanted "to be sure the D'Attilos understood why KKB would be paid 28%." Nastri claims that on January 4, 2012 she *verbally* provided the detailed explanation "that KKB was due 28% if at the time funds were paid, the statute contained a waiver provision. She further explained that the statute in effect when they signed the agreement did not have a waiver provision but that later a waiver clause was added to the statute." (KGR 16).

Ironically, given KKB's admission that the amendment trigger provision was not specifically spelled out in the March 21, 2003 agreement, the respondents wrote in their grievance reply "KKB wanted to **spell out** for the D'Attilos what they would receive after fees and costs based on an $18 million settlement… to be sure they understood why KKB would be paid 28%":

January 4th Meeting and Final Mediation Session

In anticipation of what would likely be the last mediation session on January 11th, Attorney Nastri met with the D'Attilos on January 4th. Because the D'Attilos would likely not attend the last mediation session, KKB wanted to get a sense of their bottom line settlement number. At that time there was still an $18 million offer on the table. Before deciding to reject such a substantial offer, KKB wanted to spell out for the D'Attilos what they would receive after fees and costs based on a $18 million settlement. Likewise, KKB wanted to show the D'Attilos the breakdown of what they would receive at a higher settlement number that KKB though may be a possibility based on how the negotiations were going. Accordingly, in preparation for this January 4th meeting, consents to decline the $18 million offer and to settle for $22.5 million were prepared.

At the January 4th meeting, Attorney Nastri again confirmed the D'Attilos understanding of the fee agreement to be sure they understood why KKB would be paid 28%. In simple terms, Attorney Nastri explained that KKB was due 28% if at the time funds were paid, the statute contained a waiver provision. She further explained that the statute in effect when they signed the agreement did not have a waiver provision but that later a waiver clause was added to the statute. She was assured by the D'Attilos that they understood the terms of the fee agreement. Attorney Nastri also reviewed with the D'Attilos the prepared consent to reject the $18 million offer and the $22.5 consent to settle, the amounts of the litigation costs at the time and what the D'Attilos would receive. The D'Attilos decided to decline the $18 million offer and signed the consent documents, **which both noted the 28% fee; the lawsuit costs at the time of $597,379.57; an escrow of $40,000 for further costs; other adjustments for a CL&P judgment and the pay off of the Lawsuit Funding Solutions loan; and the net to the clients.** (Ex. 31)

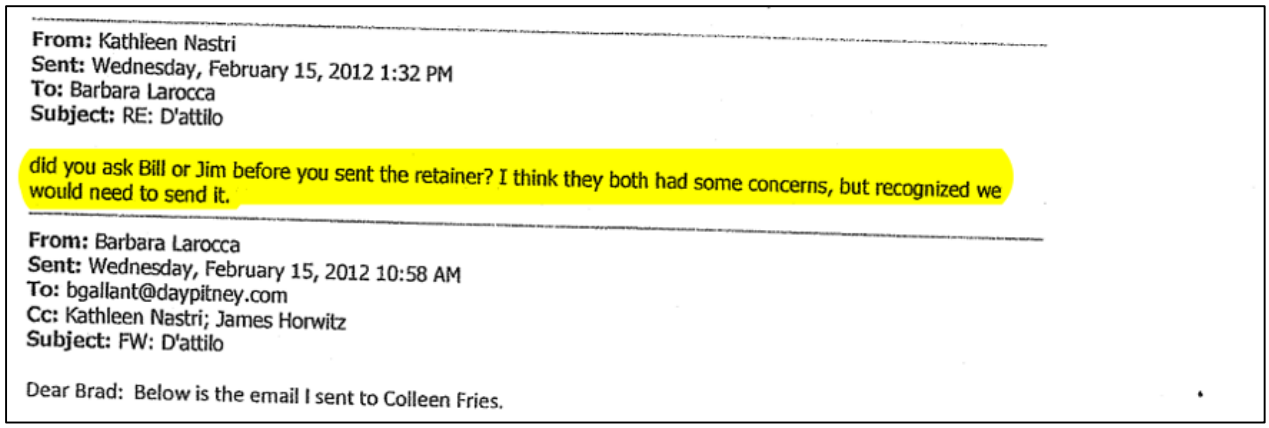
As of no later than January 4, 2012, Nastri claimed that she was fully aware of the 28% issue and was able to recite verbatim what Joel Lichtenstein allegedly told the D'Attilos on March 21, 2003 regarding the waiver and the 2005 Amendment triggering the 28%. However, what happened only six weeks later on February 15, 2012 further demonstrates Nastri's January 4, 2012 story is a recent fabrication.

As noted, Nastri states in the grievance response that "KKB wanted to spell out for the D'Attilos what they would receive after fees and costs based on an $18 million settlement" and that Nastri wanted "to be sure they understood why KKB would be paid 28%". Of course, if the KKB attorneys really wanted to "spell out" the 2005 Amendment trigger claim to make sure the D'Attilos understood, KKB would have advised the D'Attilos in writing. The reason Nastri did not do this is because her story is recently fabricated (June 2015), as further demonstrated by what happened next in 2012:

- On February 9, 2012, Colleen Fries, the guardian ad litem, requested a copy of the medical malpractice complaint, lawsuit costs, and the fee agreement.

- On February 15, 2012, Nastri, through her paralegal Barbara Larocca, forwarded those documents to Fries and Gallant. The cover email to Fries and Gallant did not "spell out" or even mention any explanation as to why 28% was due, despite the fact that Nastri claims that telling the D'Attilos this on January 4, 2012 was integral to their understanding of why 28% was being charged.

- The February 15, 2012 email mentions that Jim Horwitz and Bill Bloss, who were recipients of the November 29, 2011 email, "had some concerns" about sending the retainer agreement but recognized that they had to send it to the GAL after she requested it.



From: Kathleen Nastri
Sent: Wednesday, February 15, 2012 1:32 PM
To: Barbara Larocca
Subject: RE: D'attilo

did you ask Bill or Jim before you sent the retainer? I think they both had some concerns, but recognized we would need to send it.

From: Barbara Larocca
Sent: Wednesday, February 15, 2012 10:58 AM
To: bgallant@daypitney.com
Cc: Kathleen Nastri; James Horwitz
Subject: FW: D'attilo

Dear Brad: Below is the email I sent to Colleen Fries.

- Though Nastri supposedly already had explained the explicit statutory reason for the 28% only six weeks earlier on January 4, 2012 to the D'Attilos, she mentions nothing about the 2005 Amendment in her email to Larocca (such as, "remind Bill and Jim about the 2005 Amendment, so they have nothing to worry about"). The respondents have yet to disclose what concerns Bloss and Horwitz had as of February 15, 2012, but it is likely there is an email, memo, timesheet entry, or research that would document it.

Thus, there is a glaring disconnect between the account of the January 4, 2012 conversation with the D'Attilos and what happened on February 15, 2012 when there is not the slightest hint about the 2005 Amendment triggering 28%. The Koskoff firm never informed the Norwalk or Northern Fairfield probate courts of this either. Instead, as of February 15, 2012 Bill Bloss and Jim Horwitz had as of yet unspecified concerns about the retainer agreement. That is a far cry from the claim that KKB had no doubts about the validity of interpreting "not in effect" to mean "in effect plus amended to include a waiver."

There are other reasons to request the KKB internal documents and emails that they have so far withheld. For example, as I point out in my letter to Steven Kulas (pg. 2), one of the documents turned over to the grievance panel (but not previously turned over to me) is an email from John Bair, a financial consultant, to Kathleen Nastri indicating there is a possible potential conflict of interest involving Michael Koskoff and the doctor's insurance company. Although details of the conflict are not provided, it was so potentially serious that the financial consultant seems to suggest that Michael Koskoff might have to recuse himself.[1] None of this was disclosed to the D'Attilos. As I also noted above and in my June 15 letter to Attorney Kulas, there are portions of emails KKB did turn over that have been redacted without explanation. What are in those redactions?

II.B: MARK GREANY, CRIMINAL AND REAL ESTATE LAWYER:

The contact information I have for Mark Greany is: phone: (858) 531-6387, email: markgreany@yahoo.com, 12636 High Bluff Drive, Suite 400 San Diego, CA 92130.

According to the respondents: on March 12, 2003 "Attorney Koskoff told Attorney Greany that the statute did not prohibit the negotiation of a different fee and that in 1993, the court in Salerno, supra,

[1] Although Mr. Bair claimed in a brief phone call with me in July 2015 that he was referring to another Mike whose last name he could not remember, he has not provided any support for his contention. To the contrary, the company this other Mike allegedly work for does not list any Michael, and the company itself is not mentioned in any of the documents I have reviewed related to the D'Attilo case.

stated that a client may waive the statutory fee for complex cases, even though the fee statute did not contain a waiver provision." KGR 6-7. However, Mark Greany, who was only a criminal and real estate lawyer, apparently had a problem with the *Salerno* decision (KGR 7):

> Notwithstanding the case law, Attorney Greany expressed a concern about including a waiver provision in the fee agreement when it was not specifically provided for in the statute. Attorney Koskoff was confident that a waiver provision would be added in a future version of the statute, and he advised Attorney Greany of this. He explained that a modification to the statute to specifically allow for a waiver of the sliding scale had been in the works, which he knew based on KKB's participation in the CTLA.[12] Attorney Koskoff and Attorney Greany discussed and agreed that the D'Attilos would pay KKB 28% of any recovery, if at the time the funds were disbursed, the present statute was amended to contain a waiver of the statutory sliding scale.

The core claim by Michael Koskoff is that Mark Greany, a criminal law and real estate attorney with no background in personal injury law, raised a concern that the *Salerno* case would not permit a written waiver if the statute did not require it. This is nonsensical on its face. If the written waiver provision was held to be invalid, that would have been to the detriment of the Koskoff firm not to Greany's supposed clients the D'Attilos. In other words, there was no rational reason for Mark Greany to have had any concern about the validity of a written waiver and yet that is supposedly the reason that the Koskoff firm deleted their normal written waiver. Are there any internal memos from 2003 indicating that as a result of this conversation with Mark Greany KKB decided to no longer include the written waiver language in their retainer agreements? If so, are there other clients who had language similar to that in the D'Attilo agreement where KKB determined that the 2005 amendment triggered a higher fee than called for in the retainer?

The KKB respondents also fail to explain why Michael Koskoff and Joel Lichtenstein, who had been practicing law for nearly 80 years at the time of Koskoff drafted and Lichtenstein reviewed the retainer agreement, did not catch that the slightly more than one page retainer agreement stated that 28% fees would be payable only if the fee statute "was not in effect" rather than what they claim they bargained for: *28% applies if the fee statute remains in effect and is amended to include a waiver requirement.* This raises yet another issue:

Even if Greany had been representing the D'Attilos (which Greany denies in his affidavit), and even if he had the discussion Michael Koskoff claims (despite the fact that Koskoff's contemporaneous phone notes do not indicate that), and even if Mark Greany (a criminal and real estate attorney) expressed concern that *Salerno* would not protect the KKB firm, and even if Greany actually agreed in principle that a 28% contingency fee would apply if some future amendment to the fee statute required a waiver provision, all of that is irrelevant to the issue of whether the respondents intentionally defrauded the D'Attilos in 2012. It bears repeating, as respondents admit on page 9 of their grievance reply:

> Although the agreement between Attorney Koskoff and Attorney Greany was that if § 52-251c were amended to include a waiver provision, the fee would be 28%, admittedly the fee agreement does not specifically spell this out. However, a fee agreement must be construed to effectuate the intent of the parties, and in doing so, the circumstances connected with

Mark Greany left Connecticut many years before 2011 and moved to California. Kathleen Nastri admits that she did not read the retainer agreement until sometime in November 2011. Mark Greany had

nothing to do with the 2011-2012 events. Nastri absolutely had an obligation to alert the D'Attilos to this specific problem in the retainer agreement: "although the agreement between Attorney Koskoff and Attorney Greany was that if §52-251c were amended to include a waiver provision, the fee would be 28%, **admittedly the fee agreement does not specifically spell this out**."

At the end of the day, KKB's admission that the 2003 agreement does not spell out the waiver amendment trigger is too little and too late. Whatever took place during negotiations is irrelevant to the grievance (except to the degree there is clear and convincing evidence that the respondents have fabricated the story regarding negotiations, in which case they should be held accountable for the fabrication as well).

> "[T]he intent of the parties [to a contract] is to be ascertained by a fair and reasonable construction of the written words and ... the language used must be accorded its common, natural, and ordinary meaning and usage where it can be sensibly applied to the subject matter of the contract ... Where the language of the contract is clear and unambiguous, the contract is to be given effect according to its terms. **A court will not torture words to import ambiguity where the ordinary meaning leaves no room for ambiguity** ... [C]ourts do not unmake bargains unwisely made. **Absent other infirmities, bargains moved on calculated considerations, and whether provident or improvident, are entitled nevertheless to sanctions of the law** ... Although parties might prefer to have the court decide the plain effect of their contract contrary to the agreement, it is not within its power to make a new and different agreement ..." (Citations and internal quotation marks omitted.) *Neubig v. Luanci Construction*, 124 Conn.App. 425, 432 (2010)

The language of the March 21, 2003 retainer agreement is as clear and unambiguous as one could imagine in a contract. There simply is no other conceivable interpretation or spelling out of the words: "if the statute is not in effect…" Those words cannot be tortured into meaning the exact opposite of what they say: "if the statute is in effect and is amended to include a waiver provision then the D'Attilos owe 28%..."[2]

How clear and convincing is this? This is easily testable. I have asked a number of individuals to read that paragraph and to tell me what it means. Every single person I have shown that language to, whether an attorney or non-attorney, invariably and unsurprisingly says it means 28% is payable if the statute is not in effect (with some saying it means 28% is payable if the statute is repealed). Many other attorneys have contacted me after reading about the case online. Every single one agrees that the March 21, 2003 agreement means exactly what it says.

Of course, there are many other issues I am not addressing this letter as they have been addressed elsewhere, particularly the events regarding the move from Norwalk to Bethel. Those events also presumably created internal communications in the form of emails, memos, or research (for example,

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[2] *See also* Parole evidence cannot be used to vary or contradict the terms of the contract. *TIE Communications, Inc. v. Kopp*, 218 Conn. 281, 288, 589 A.2d 329 (1991). Contract language is unambiguous when it has a definite and precise meaning about which there is no reasonable basis for a difference of opinion." *Christian v. Gouldin*, 72 Conn.App. 14, 20, 804 A.2d 865 (2002). (Internal quotation marks omitted.) "**A court will not torture words to import ambiguity where the ordinary meaning leaves no room for ambiguity, and words do not become ambiguous simply because lawyers or laymen contend for different meanings**." *Mallozzi v. Nationwide Mutual Ins. Co.*, 72 Conn.App. 620, 628, 806 A.2d 97, *cert. denied*, 262 Conn. 915, 811 A.2d 1292 (2002) (Internal quotation marks omitted.)

research as to which probate court jurisdictions were acceptable), and lend further support to a request that KKB turn over everything they have previously withheld.

III: COLLEEN FRIES:

On a separate topic, we had talked briefly about Colleen Fries when we met. I enclose all the correspondence I had with Colleen Fires. PDF 80-89.

I did point out to you that there was conflicting information provided by Attorney Fries as well as the apparent withholding of crucial documents. For example, on July 25, 2014 I asked her what the status of my getting documents was. Her reply: "I never did anything as guardian so I have nothing to give you." PDF 80. I had sent her an authorization from the D'Attilos requesting anything and everything that she had. PDF 82. Since I knew for a fact that she had received a copy of the March 21, 2003 retainer agreement, the medical malpractice complaint, and the lawsuit costs summary, I followed up on July 25 with several questions regarding her appointment. PDF 84. I received no response. I followed up again on August 5, 2014. This time she responded that she obtained her file from storage and would be sending me a copy. PDF 83. On or about August 8, 2014 I received a copy of her file which included a total of four documents. PDF 85-89. The documents she provided did not include the March 21, 2003 retainer agreement, the medical malpractice complaint, or the lawsuit costs summary.

On the phone, Colleen Fries claimed to have virtually no memory of the case. However it turns out that she spoke with two attorneys from Ivey Barnum in April 2013 who filled her in on what had been going on and were asking her to consider getting involved again. PDF 90. She mentioned nothing to me about being asked to get involved in the case again, and refused to speak with me after she reviewed the civil complaint.

The point of my mentioning this is that on top of everything else, including what I believe is clear and convincing evidence that the respondents' sole motivation for getting Cathy and Domenic to move was to find a jurisdiction where a GAL would likely not be appointed, Colleen Fries has been less than forthcoming to me and withheld the most crucial document that she received, the March 21, 2003 retainer agreement. Why would she withhold the March 21, 2003 retainer agreement but send me a letter that tries to give me the impression she has turned over her entire file? Bringing this back to internal documents, are there any internal documents from the KKB firm related to Colleen Fries and her role in this case?

The other interesting point about some of the correspondence between Michael Jones and Ann Crane is that they were apparently attempting to get Attorney Fries interested in being involved again and there is no concern expressed that she would cause a problem. While I have not addressed events regarding the move from Norwalk to Bethel in this letter, I have previously addressed them, as well as detailed it in the grievance complaint itself.

V: CONCLUSION

There are parallels between this case and *Statewide Grievance Comm. v. Ankerman*, No. CV000802379, 2001 WL 34039473, *aff'd*, 74 Conn. App. 464 (2003). Ankerman was ultimately convicted of larceny in the first degree by embezzlement.

In that case, unlike here, Ankerman self-reported misappropriation of $35,000 from settlement money. However, he later attempted to modify the amount. As the appellate court noted "his delayed correction of what would have been a gross miscalculation suggests that the adjustment of the attorneys fees figure was as an afterthought to cover what was obviously selfish and dishonest conduct on his part." Id. at *6. Though the events surrounding the move from Norwalk to Bethel provide substantial evidence of intentionality on the part of the respondents, the story of the 2005 amendment requiring a written waiver triggering a 28% contingency fee in the March 21, 2003 retainer agreement, was fabricated in June 2015 and is KKB's attempt "to cover what was obviously selfish and dishonest conduct" on their part.

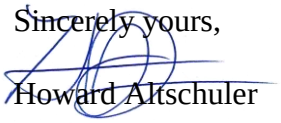
What Ankerman did pales in comparison to what the respondents have done. There is clear and convincing evidence that the respondents intentionally defrauded the D'Attilos, both in the lead up to the settlement agreement on January 11, 2012, as well as their role in getting the D'Attilos to move from Norwalk to Bethel. In addition, there is clear and convincing evidence that the respondents fabricated a story regarding Mark Greany as summarized above in an attempt to convince the grievance panel they had a good faith belief 28% was authorized by the retainer agreement. The Koskoff respondents should face separate ethical charges for such fabrication.

Since the requested internal documents have already been separated by KKB, it will not be a burden for them to produce it. Especially in light of the fact that the respondents are unable to account for billing records that document more than $600,000 in purported legal costs, I only request that there be an affirmative representation by the respondents that in fact they are turning over everything without exception and if there is anything that they are withholding, they provide a privilege log.

Again, this letter focuses on only certain issues. There are other issues as well, summarized in other documents and, as I noted above, I would be happy to meet with you at any time to go over any and all documents or chronology in whatever detail you require in order to address any questions or concerns that you may have.

Thank you very much for your attention to this important matter.

Sincerely yours,



Howard Altschuler

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Tara Engelman, R.N.

June 11, 2014

VIA HAND DELIVERY

Howard Altschuler, Esquire
Law Offices of Howard Altschuler
21 Perkins Road
Bethany, CT 06524

Re: Cathy and Domenic D'Attilo, et al

Dear Attorney Altschuler:

I have your letter dated June 10, 2014. Let me first say that Kathleen and I are sorry to hear that Cathy and Domenic D'Attilo may have encountered problems since our representation was concluded.

From your first communication on May 13, 2014, we assembled what we believed to be the history of this matter. We estimate that by May 30th, we had already sent you approximately 100,000 pages of documents.

Since then, we have reviewed our electronic data and archived files and are providing you with additional records that we have located. We have also asked an outside law firm to review whatever remaining information we have, to be certain that our firm has complied with the Connecticut Rules of Professional Conduct. We believe the remaining documents to be internal notes, which are not required to be produced. If after their review, there are any other documents that should be sent to you, they will be forwarded to you immediately.

Please pass on our best regards to the D'Attilo family.

Very truly yours,

James D. Horwitz

JDH/yj
Enclosure

DOCKET NO.: NNH-CV-14-6051836S	SUPERIOR COURT
CATHY M. D'ATTILO, ET AL	J. D. OF NEW HAVEN
vs.	AT NEW HAVEN
KOSKOFF, KOSKOFF & BIEDER, P.C., ET AL	JANUARY 26, 2015

DEFENDANTS' REQUEST TO REVISE[1]

Pursuant to Practice Book §10-35, the defendants, Koskoff, Koskoff & Bieder, PC, Kathleen L. Nastri, Esq., James D. Horwitz, Esq., Michael P. Koskoff, Esq., William M. Bloss, Esq. and Joel H. Lichtenstein, Esq., (hereinafter the "Koskoff defendants"), hereby request the plaintiffs to revise their Complaint dated December 30, 2014, in the following respects:

FIRST REQUESTED REVISION

As to Paragraphs 40 and 60 of Count One, Paragraphs 170 through 173 and 175 of Count Two, and Paragraphs 195 and 196 of Count Five as well as the title of Count Five, delete references to the 2005 version of Conn. Gen. Stat. §52-251c.

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[1] **The Koskoff defendants have filed a Motion to Stay this action pending arbitration of all claims pursuant to the arbitration provision in the March 21, 2003 written agreement for legal services with the plaintiffs. The Motion to Stay should be decided before further pleading or discovery. Because of the pleading deadline, however, the Koskoff defendants are filing this Request to Revise to preserve their right to plead. The filing of this pleading is in no way a waiver of the Koskoff defendants' right to seek arbitration pursuant to the written agreement.**

LAW OFFICES • NUZZO & ROBERTS, L.L.C. • ONE TOWN CENTER • POST OFFICE BOX 747 • CHESHIRE, CONNECTICUT 06410 • (203) 250-2000 FAX (203) 250-3131 • JURIS NUMBER 019193

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PORTION OF PLEADING SOUGHT TO BE REVISED

40. By filing that application on January 12, 2012, seeking fees in excess of those permitted by the statute, among other things, the Koskoff defendants violated §52-251c(g). *See Count Five, ¶195-200.*

60. Colleen Fries would see that the Koskoff Firm was not entitled to a 28 % contingency fee of $7 million, and she would correctly calculate the exact and only amount of fees the Koskoff Firm would have been entitled to *if* they had not violated §52-251c(g): $2,660,000.

170. Those legal fees, in turn, were mandated and limited by Connecticut General Statute §52-251c, requiring attorneys representing clients in personal injury cases to strictly limit contingency fees to a very specific sliding-scale unless a client knowingly and voluntarily signs a very specific, "conspicuous", "in **boldface** type" waiver of rights to that limitation, as follows:

> **"I UNDERSTAND THAT THE FEE SCHEDULE SET FORTH IN SECTION 52-251c OF THE CONNECTICUT GENERAL STATUTES LIMITS THE AMOUNT OF ATTORNEY'S FEES PAYABLE BY A CLAIMANT AND THAT THE STATUTE WAS INTENDED TO INCREASE THE PORTION OF THE JUDGMENT OR SETTLEMENT THAT WAS ACTUALLY RECEIVED BY A CLAIMANT. NOTWITHSTANDING THAT THE LEGISLATIVE INTENT IN ENACTING THAT FEE SCHEDULE WAS TO CONFER A BENEFIT ON A CLAIMANT LIKE MYSELF, I KNOWINGLY AND VOLUNTARILY WAIVE THAT FEE SCHEDULE IN THIS CLAIM OR CIVIL ACTION."**

171. Any waiver must be in writing, must set forth the full fee schedule otherwise mandated by law, and must be signed and acknowledged by the clients, and countersigned by a notary or other person authorized to take acknowledgments.

172. In addition, prior to signature, the attorney needs to explain the statute to the client, advise the client of the client's "right to seek representation by another attorney willing to abide by the percentage limitations", and, critically, to provide the client with "a sufficient period of time to review the proposed contingency fee agreement" and, if the

client wishes, sufficient time to "seek representation by another attorney prior to entering into such agreement." §52-251(c)(e).

173. None of those requirements of law were met by the defendants. Instead, on or about May 15, 2012 the Koskoff defendants intentionally and knowingly converted funds held in trust belonging to Cathy, Domenic and Danny, after defrauding the plaintiffs as summarized above. Koskoff defendants were aided and abetted in this fraud by the Day Pitney defendants.

175. Once those funds were transferred to the Koskoff defendants' business or other accounts, the D'Attilos were permanently denied their ownership rights as established by §52-251c.

COUNT FIVE: CONTINGENCY FEE RECOVERY AS PER §52-251c(g)

195. Conn. Gen. Stat. §52-251(c)(g) states:

> **No fee shall be payable to any attorney who *seeks* a fee** that exceeds the percentage limitations of subsection (b) of this section unless the claimant has waived such limitations pursuant to this section and a contingency fee agreement complies with the requirements of subsection (e) of this section.

196. Once the defendants proactively submitted or endorsed documents to the Probate Court **seeking** payment of legal fees to the Koskoff defendants that exceeded the percentage limitations of §52-251(c), given their failure to comply with the waiver requirements of the law, they no longer had *any* right to receive *any* legal fees.

REASON FOR REQUESTED REVISION

Pursuant to Practice Book §10-35, a Request to Revise is appropriate when a party seeks the deletion of unnecessary, impertinent, immaterial or otherwise improper allegations in a plaintiffs' Complaint. In the above cited paragraphs as well as the title of Count Five, the plaintiffs cite to the 2005 version of Connecticut General Statutes §52-251c, which is not applicable to the retainer agreement alleged in the Complaint. The

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provisions of §52-251c relied on by the plaintiffs in the above quoted paragraphs were not contained in the prior version of this statute that was in effect when the retainer agreement was executed. Therefore, the plaintiffs' reference to the 2005 version of §52-251c is immaterial and improper.

More specifically, the Complaint contains allegations regarding a March 21, 2003 retainer agreement pertaining to the Koskoff defendants' representation of the plaintiffs for medical malpractice claims arising out of birth injuries sustained by their son in February 2003. (See Complaint, ¶¶ 13, 19, 20.) Public Act No. 05-275 amended §52-251c, adding five new subsections. The 2005 version of the statute contains subsections (a) through (h), whereas the prior (1991) version contains only subsections (a) through (c). Public Act 05-275 stated that it was "**effective from passage [July 13, 2005] and applicable to causes of action accruing on or after said date.**" Public Acts 2005, No. 05-275, § 1 (emphasis added). Based on the allegations of the Complaint, the retainer agreement was executed well before July 13, 2005 and the cause of action for which the Koskoff defendants were representing the plaintiffs accrued well before July 13, 2005. Accordingly, the 2005 version of the statute, with the additional subparagraphs quoted by the plaintiffs, is not applicable to the plaintiffs' claims and should be deleted.

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REASON FOR REQUESTED REVISION

Pursuant to Practice Book Section 10-1, the plaintiffs are required to give a plain and concise statement of the material facts on which they rely. As currently pled, Paragraphs 257 and 258 allege only an open ended claim of "unfinished issues" without specifying what those issues are. The plaintiffs' use of the phrase "for just one example," does not provide adequate notice of this claim and would allow proof at trial of any number of unspecified "issues" that are not referenced in this Complaint. This would prejudice the defendants and in addition, would prevent them from properly responding to these claims and preparing a defense. Accordingly, the phrase "for just one example" should be deleted, and any other alleged "unfinished issues" (if any) should be specified.

SEVENTH REQUESTED REVISION

Delete the reference to treble damages in paragraph 167 of Count One, paragraph 176 of Count Two, and paragraph 200 of Count Five.

PORTION OF PLEADING SOUGHT TO BE REVISED

167. In addition to compensatory damage, the plaintiffs will also seek prejudgment interest, treble damages and punitive damages in an amount to be determined at trial.

176. In addition to punitive damages, the plaintiffs will also seek prejudgment interest from the day the Koskoff defendants illegally converted client funds held in trust, and treble damages pursuant Connecticut General Statute §52-564. See Count Three.

200. The Koskoff defendants were not entitled to payment of any legal fees as of no later than April 24, 2012 and as early as January 12, 2012. In violation of law, the Koskoff defendants transferred the full amount of legal fees that they falsely claimed were due to them on or about May 15, 2012. Therefore, all $7 million in legal fees are subject to recovery pursuant to statute, prejudgment interest, and treble damages.

REASON FOR REQUESTED REVISION

Pursuant to Practice Book §10-35, a Request to Revise is appropriate when a party seeks the deletion of unnecessary, impertinent, immaterial or otherwise improper allegations in a plaintiffs' Complaint. The reference to treble damages is inappropriate in Counts One, Two and Five because none of the alleged causes of action would allow for recovery of treble damages.

Count One alleges common law fraud and misrepresentation. Count Two alleges a common law claim for conversion. These common law claims do not give rise to a claim for treble damages. To the extent that the plaintiffs reference Conn. Gen. Stat. §52-564 in Count Two, this does not give rise to a claim for treble damages as to the common law conversion count, as Counts Two and Three allege separate causes of action, and only Count Three ("Statutory Theft") is based on §52-564.

Count Five is entitled "Contingency Fee Recovery as Per §52-251c(g)" and claims that the legal fees recovered by the Koskoff defendants are subject to recovery pursuant to this statute. In the First Requested Revision, the defendants seek the deletion of all references to the 2005 version of §52-251c as it does not apply to the retainer agreement alleged in the Complaint. Notwithstanding this, there is no provision in any

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version of §52-251c that provides for treble damages. Further, there is no other statutory provision in this count that would allow for an award of treble damages.

Accordingly, the reference to treble damages should be deleted from Counts One, Two and Five.

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EIGHTH REQUESTED REVISION

Delete the first sentence of paragraph 220 of Count Seven, and amend subparagraph f. of the Prayer for Relief to reflect that attorney's fees are not claimed as to Count Seven.

PORTION OF PLEADING SOUGHT TO BE REVISED

220. In addition, due to the acts of the Koskoff defendants the plaintiffs will be incurring either hourly legal fees or contingent fees, and expenses, in this action, which but for the malpractice as detailed above, would not have been incurred. The plaintiffs also have incurred and will be incurring legal fees and expenses to correct or mitigate the damages caused by the negligence of the Koskoff defendants. The plaintiffs seek consequential damages for the legal malpractice committed by the Koskoff defendants.

WHEREFORE AS TO ALL COUNTS, IN ADDITION TO THE ABOVE, THE PLAINTIFFS CLAIM:

f. Reasonable attorney's fees.

DOCKET NO.: NNH-CV-14-6051836S	SUPERIOR COURT
CATHY M. D'ATTILO, ET AL	J. D. OF NEW HAVEN
vs.	AT NEW HAVEN
KOSKOFF, KOSKOFF & BIEDER, P.C., ET AL	FEBRUARY 20, 2015

REPLY TO OBJECTION
TO MOTION TO STAY THIS ACTION PENDING ARBITRATION

The defendants, Koskoff, Koskoff & Bieder, PC, Kathleen L. Nastri, Esq., James D. Horwitz, Esq., Michael P. Koskoff, Esq., William M. Bloss, Esq. and Joel H. Lichtenstein, Esq. (hereinafter collectively referred to as "KK&B") submit this reply to the plaintiffs' objection to motion to stay this action pending arbitration.

The plaintiffs challenge the enforceability of the arbitration agreement based on the contingency fee scale set forth in General Statutes § 52-251c, but wrongfully omit that they agreed to opt out of the statutory fee limitation. Additionally, the plaintiffs repeatedly cite to a later version of General Statutes § 52-251c, which on its face has no application to this case. What is before this court is whether most of the claims should be arbitrated and the balance of the case stayed pending the outcome of the arbitration. Much of what the plaintiffs argue has nothing to do with in what forum these issues will be heard. Instead, the plaintiffs continue to repeat their substantive claims as if the trial is at hand.

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General Statutes § 52-251c(b), KK&B could only receive a 10% fee and now must return the entire fee. (Obj. memo., p. 5, 6). As an initial matter, the plaintiffs' argument as to the substantive merits of their claims is misplaced. The issue is whether arbitration is the proper forum in which to adjudicate the plaintiffs' claims, including those based on § 52-251c. The plaintiffs' arguments that they will win this case have no relation to whether their claims are arbitrable.

Notwithstanding, given this dominate argument in their objection, which they claim completely bars arbitration, a brief response as to the merits is warranted. KK&B contends that the plaintiffs' claims are factually inaccurate and legally unfounded. First, the plaintiffs ignore that portion of the retainer agreement, which states "[i]f that statute is not in effect at the time money is to be distributed to the Client, K K & B shall receive fees of twenty-eight (28%) of the total recovered." (Ex. A to mot. stay memo.).

Second, the plaintiffs also cite to the 2005 version of § 52-251c, which is not applicable to the 2003 retainer agreement. They rely on 52-251(c)(e), which provides that in order for a client to waive the fee schedule in § 52-251c(b), the client must execute a specific, conspicuous waiver of rights. They also rely on § 52-251c(g), which states:

> **No fee shall be payable to any attorney who *seeks* a fee** that exceeds the percentage limitations of subsection (b) of this section unless the claimant has waived such limitations pursuant to this section and a contingency fee agreement complies with the requirements of subsection (e) of this section.

NO: NNH-CV14-6051836—S	:	SUPERIOR COURT
CATHY M. D'ATTILO, ET AL	:	JUDICIAL DISTRICT OF NEW HAVEN
v.	:	AT NEW HAVEN, CONNECTICUT
KOSKOFF, KOSKOFF & BEIDER, P.C.: ET AL		FEBRUARY 23, 2015

MOTIONS

BEFORE THE HONORABLE MATTHEW E. FRECHETTE, JUDGE

A P P E A R A N C E S :

Representing the Plaintiff(s):

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Representing the Defendant(s):

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Court Recording Monitor
235 Church Street
New Haven, Connecticut 06511

wholesale precludes arbitration.

We did briefly respond. It is our position that the claims are factually inaccurate and legally unfounded.

The plaintiffs ignore a portion of the retainer agreement which states if that statute is not in effect at the time the money is to be distributed to the client KKB shall receive fees of twenty—eight percent.

And, second, the plaintiffs are citing to a 2005 version of 52—21c. That statute contains subsections requiring a specific waiver to be executed to waive the statutory fee cap. And it also contains another subsection providing that an attorney who seeks the higher fee isn't entitled to any fee.

The 2005 version of the statute, however, is not applicable to the 2003 retainer agreement and doesn't provide any basis or recovery.

We've cited to the Public Act which added those subsections, and it specifically states that it was effective from passage in 2005, and applicable to causes of action accruing after said date.

Finally, at the time the plaintiffs signed the 2003 retainer agreement, Connecticut case law provided that a client could opt out of the fee cap in 52—251c without any specific conditions.

The plaintiffs here did negotiate with KKB for a twenty—eight percent fee. They later acknowledged and ratified this agreement.

Accordingly, the argument that there's only one possible outcome in this case that precludes arbitration is just erroneous.

The plaintiffs also argue that an arbitrator cannot resolve this matter because he might permit KKB to recover outside of the fee scale in the statute. There's no case law in support of this argument.

The argument is presuming that an arbitrator is going to violate the law, and that the process of arbitration will be unfair. However, our Courts have held that arbitration is a favored means to resolve disputes.

Our Courts have also held that statutory claims are arbitrable.

The plaintiffs also assert that based on a statement of Michael Koskoff that KKB will

NNH-CV14-6051836-S

CATHY M. D'ATTILO, INDIVIDUALLY *and* DOMENIC D'ATTILO, INDIVIDUALLY, *and* DANIEL JACOB D'ATTILO PPA by his parents Domenic D'Attilo and Cathy M. D'Attilo, *Plaintiffs* -v- KOSKOFF, KOSKOFF & BIEDER, P.C. *and* DAY PITNEY, LLP *and* KATHLEEN L. NASTRI, ESQ. and JAMES D. HORWITZ, ESQ. *and* MICHAEL P. KOSKOFF, ESQ. *and* WILLIAM M. BLOSS, ESQ. *and* JOEL H. LICHTENSTEIN, ESQ. *and* KEITH BRADOC GALLANT, ESQ. *and* REBECCA A. IANNANTUONI, ESQ., *Defendants*	SUPERIOR COURT Judicial District of New Haven **MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL TERMINATION/LIFTING OF ANY TEMPORARY OR ONGOING STAY DUE TO NEW DEVELOPMENTS NECESSITATING AN APPLICATION FOR PREJUDGMENT REMEDY** **March 17, 2015**

SUMMARY

On May 14, 2014, a jury awarded the *Kuehl* estate $1.1 million in damages for legal malpractice claims against the Koskoff firm. Five days ago, on March 12, 2015, the estate filed a petition for prejudgment remedy of more than $12 million against the Koskoff firm. The *Kuehl* estate's motion to terminate an appellate stay, and petition for prejudgment remedy against the Koskoff firm, is a significant new development meriting the granting of the D'Attilos' request to proceed with their own petition for a prejudgment remedy. *Kuehl v. Koskoff,* No. FSTCV990171076S (1999). Motion Exhibits, Appendix I, pgs. 1-26.

On February 23, 2015, the D'Attilo court granted a temporary stay (#128.00) pending its decision on the Koskoff/Day Pitney defendants' various motions to stay. As of this writing, the court has not yet issued an opinion on whether it will deny the stay. Though the plaintiffs asked this court to carve out certain exceptions to any stay (#121.00, #123.00, #127.00), the *Kuehl* petition, with its strong likelihood of success, will significantly impact the D'Attilos' ability to secure a judgment without an immediate petition for a prejudgment remedy. *See Point I.*

In addition, agreements between attorneys and clients are strictly scrutinized. The burden is on the attorney to prove the agreement is fair, equitable, and honest. At the same time, a client only has to establish probable cause to prevail on a prejudgment remedy. This court should exercise its discretion to modify stays to permit the D'Attilos to petition for a prejudgment remedy. This is necessary to safeguard a future judgement given the extremely high likelihood that the D'Attilos will prevail. This is particularly apt in light of the defendants' one and only frivolous defense that the defendants were entitled to 28% because the 2005 amendment to the tort reform statute meant to that the statute was no longer in effect in 2012. This exact argument was previously rejected by the Connecticut Supreme Court in *LeConche v. Elligers*, 215 Conn. 701 (1990). *See Point II.*

Defendants have no defense, offset, or setoff, for the fraud related claims. This will result in a likely prejudgment remedy of nearly $30 million before calculating punitive damages on the fraud related claims alone.[1] The *Kuehl* estate's petition will have a significant negative impact on the D'Attilo's ability to identify, locate, or attach sufficient assets. Defendants have engaged in a course of misconduct and should not be given the benefit of any doubt as it applies to what they may do with their assets without the protections afforded to the plaintiffs by a petition for prejudgment remedy. Defendants have already apparently destroyed litigation invoices making it impossible to double-check the legitimacy of more than $600,000 in legal costs charged to the plaintiffs. Amended Complaint A.C. ¶204, #122.00 pg. 57. The court should lift any stay to permit the D'Attilo petition to proceed.

[1] Prejudgment remedy interest is up to 10% per year, with the exact amount left to the court's discretion. Conn. Gen. Stat. §37-3a. *Sosin v. Sosin*, 300 Conn. 205, 229 (2011). The Koskoff firm overtly took exclusive possession of the $7 million in legal fees to which it was not entitled on or about May 14, 2012. At a 10% statutory rate of interest of $700,000 per year, the total potential amount due with interest as of May 14, 2015 is $9,100,000. Trebling the damages for the fraud related claims alone (Conn. Gen. Stat. §52-564), would mean that up to $27,300,000 would be subject to immediate prejudgment remedy. *Suarez-Negrete v. Trotta*, 47 Conn. App. 517, 522 (1998). Since the coconspirators would be jointly and severally liable, the Koskoff firm and the individual defendants would be subject to nearly $40 million in prejudgment remedy attachments, combining the instant case with the *Kuehl* case. This calculation does not include the D'Attilos' other substantial claims or punitive damages.

Rather than acknowledge they have been caught red-handed stealing millions of dollars, and returning the stolen money to the plaintiffs (as is their continuing ethical obligation regardless of the lawsuit or arbitration), the defendants "ingeniously" make the thoroughly frivolous claim that the reason they are entitled to 28% is because §52-251c was not in effect at the time money was distributed in 2012. KKB Reply #126.00, pg. 4. TR5:5-10, Ex. 21. The Koskoff defendants also now claim: "the 2005 version of §52-2510…is not applicable to the 2003 retainer agreement." KKB Reply #126.00, pg. 4. TR5:-11-18, Ex. 21.

In reality, in *LeConche v. Elligers*, 215 Conn. 701 (1990), *superseded by statute on other grounds*, the Connecticut Supreme Court addressed this very issue-- the impact of a "repeal" when a law is simultaneously amended as part of that repeal. The *LeConche* plaintiffs argued that the 1987 "repeal" of the tort reform requirement for a medical malpractice certificate of good faith (§52-190a) meant that LeConche's claims, which arose in 1986, no longer required a certificate of good faith because the law repealing and replacing the 1986 version of the law (which also required a good-faith certificate) went into effect in 1987.

In *LeConche*, the Connecticut Supreme Court rejected this argument out of hand and stated: "The use in the 1987 public act of the words "repeal" and "substituted in lieu thereof" simply reflected the legislature's drafting convention of amending statutes by 'cast[ing] acts which alter language within existing statutory subsections in the form of repeal and substitution.'" (Citation omitted). Id. at 707. *See also Simborski v. Wheeler*, 121 Conn. 195 (1936) ("Indeed, where a new provision is to be substituted for an existing one, whether the new takes the form of a direct enactment, with a repeal of the old, or of an amendment substituting the new for the old is ordinarily wholly immaterial, depending upon the preference of the draftsman of the act."). *Parnoff*

v. Yuille, 139 Conn. App. 147, 169 (2012) (holding that the 2005 amendment codified existing policy and was applicable to a retainer agreement signed in 1998, with fees collectible in 2004).

It is bad enough that the Koskoff firm has taken this court's time with an argument that was rejected in 1990 by the Connecticut Supreme Court in *LeConche* and in 2012 by the appellate court in *Parnoff*. Still worse, the Koskoff firm undoubtedly is fully familiar with *LeConche*. The Koskoff firm was the attorney of record for at least three cases where *LeConche* was cited in a written opinion. *See, e.g.*, *Kos v. Lawrence & Mem'l Hosp.*, No. KNLCV136019304S, 2014 WL 3906521 (Conn. Super. July 8, 2014), *Plourde v. Hartford Hosp.*, No. HHDCV020814180S, 2006 WL 618588 (Conn. Super. Feb. 28, 2006), *Wilkins v. Connecticut Childbirth & Women's Ctr.*, No. CV095007713S, 2010 WL 1885340 *aff'd sub nom. Wilkins v. Connecticut Childbirth & Women's Ctr.*, 135 Conn. App. 679 (2012) *rev'd*, 314 Conn. 709 (2014).

In another case, Judge Blawie colorfully noted that similarly unbelievable claims, in light of the actual facts, did not pass the "smell test". *Katcher v. 3V Capital Partners LP*, No. X05CV085008383S, 2011 WL 1105724, at *5 (Conn. Super. Feb. 1, 2011.) In *Katcher*, the "smell test" referred to by Judge Blawie involved a defendant who literally moved, in the middle of the night, from one office to another office, along with the computer server, furniture, property, and a dozen employees. "If intent is a state of mind proven by conduct and circumstantial evidence, these circumstances simply do not pass the 'smell test' when viewed from the perspective of a limited partner, especially when that 3V partnership interest itself apparently went out the door that night along with the 3V office furniture and employees." Id.

The D'Attilos' Amended Complaint details the defendants' maneuvers and machinations to prevent the March 21, 2003 retainer agreement from being scrutinized by two probate courts and the guardian ad litem. Though the D'Attilos did not literally move in the middle of the night as in

AFFIDAVIT OF ROSANNA MERCURI

I, Rosanna Mecuri, being over 18 years of age, and duly sworn, depose and say:

1. I live in Norwalk Connecticut. Domenic D'Attilo is my brother.
2. The following is my recollection of events from more than twelve years ago.
3. In 2003, I did part-time babysitting for Mark Greany and his wife. Mark was an attorney.
4. I occasionally babysat at the same time I took care of my three children.
5. Sometime after the birth of my nephew Danny, I had a very brief conversation with Mark Greany in the kitchen of his house. I very briefly told Mark that my brother Dom had questions about contingency fee rates for a case related to Danny. I said Dom told me he thought the contingency fee asked by another law firm for sounded high.
6. Mark said as a favor to me he would look into it and call my brother. I gave Dom's phone number to Mark. That entire conversation with Mark only lasted a few minutes.
7. I do not recall ever seeing a copy of any fee agreement, or my ever giving a copy of any agreement to Mark Greany. Mark did not ask me about the agreement or request it from me.
8. At some point after that (I don't remember when), I asked Mark if he had called my brother. Mark said he had. I remember Mark said that he had been able to help Dom get a better rate. I thanked Mark for the favor he did for me and I never talked about it again with Mark.

Rosanna Mecuri

IN WITNESS WHEREOF, subscribed and sworn to before me: On this the 6th day of MARCH, 2015, personally appeared and identified, duly authorized signer and sealer of the foregoing affidavit, Rosanna Mecuri and acknowledged the same to be her free act and deed and under penalty of perjury, before me.

Notary Public in and for Connecticut

NOTARY: Patricia R. Jurgielewicz

Patricia R. Jurgielewicz
NOTARY PUBLIC
State of Connecticut
My Commission Expires May 31, 2017

AFFIDAVIT OF JOSEPH PASCUCCI

I, Joseph Pascucci, being over 18 years of age, and duly sworn, depose and say:

1. I live in Naugatuck, Connecticut.
2. I first heard of Cathy, Domenic, and Danny D'Attilo when I was selected to serve on the jury for their medical malpractice case in April and May 2009. I also was selected to serve as the jury foreperson. I was one of the five out of six jurors who voted in the D'Attilos' favor.
3. Very soon after the trial ended, I received a call from someone (I believe it was Jim Horowitz) at Koskoff Koskoff & Bieder asking if I would meet with them to discuss the case and the jury deliberations. I agreed to do so. I met with Kathleen Nastri and Jim Horowitz along with 3 or 4 other jurors a few weeks later at their office in Bridgeport.
4. A few minutes after I received the call from KKB, I then received a call from Domenic D'Attilo. We spoke for a few minutes about the trial and he then invited my wife Marcie and myself over to dinner to discuss the case. We all met for dinner with Domenic and Cathy at their home in Norwalk the following weekend where we discussed the trial in detail.
5. Cathy and Dom, my wife Marcie, and I, began to socialize together and became very close friends over time. We remain very close friends to this date and we have spent a lot of time socializing with Cathy, Dom, and Danny.
6. Although we did not attend the second trial, we talked often about the case at that time and after as well.
7. I remember very distinctly that just a few days or so before the case was finally settled in January 2012, I received a call from Domenic who was very upset.
8. He told me that Kathleen Nastri had called and told them that the retainer agreement had expired and that they had to come in to sign some kind of new agreement. I remember Dom

telling me that Kathleen Nastri said that Michael Koskoff was not going to be happy because there was no way they were going to agree to a new deal. I didn't know who Michael Koskoff was up until that time.

9. I told him not to sign anything and it didn't make any sense. I told Domenic that I did not know what the rules were or what the law allowed, but I told him that it did not sound right to me. From that conversation, I understood from Dom that he and Cathy were not intending to sign anything. I recall Dom saying something like "why would I give them millions of dollars for nothing, just because I'm a nice guy?" I mostly remember that Domenic was very upset, and the overall reason was that they (KKB) felt they were entitled to higher fees than they had agreed upon and their reasoning was that the retainer agreement was now invalid, which, on its face, seemed like BS to me. Dom never said anything to me about whether he had a copy of the retainer agreement. The issue did not come up in that conversation.
10. I have been to Dom and Cathy's houses dozens of times after we met in 2009, including in January 2012, after the final settlement, and many times since then as well. They never showed me a copy of the agreement, the issue never came up, and I never thought to ask if they had a copy.

Joseph Pascucci

IN WITNESS WHEREOF, subscribed and sworn to before me: On this the 15 day of JUNE, 2015, personally appeared and identified, duly authorized signer and sealer of the foregoing affidavit, Joseph Pascucci and acknowledged the same to be his free act and deed and under penalty of perjury, before me.

Notary Public in and for Connecticut

NOTARY: Paula Darby

My Commission Expires
October 31, 2019

PAULA M. DARBY NOTARY PUBLIC CHARLOTTE

ConnecticutLawTribune

NOT FOR REPRINT

Law Firm Says It Was Justified in Keeping 28 Percent of Med-Mal Settlement

Koskoff says it made contingency fee clear to disabled boy's parents

Thomas Scheffey, The Connecticut Law Tribune

February 2, 2015

New details have emerged in a legal malpractice case brought by a brain-damaged boy and his parents who are suing two respected Connecticut law firms for allegedly defrauding them of millions of dollars.

The D'Attilo family claims that lawyers at Koskoff Koskoff & Bieder in Bridgeport and Day Pitney in New Haven engineered a complex scheme to take an extra $4.3 million in legal fees in 2012 that were not legally allowed under state statute or any signed retainer agreement.

In an interview, Michael Koskoff, the firm's senior partner, disputed the allegations of Domenic and Cathy D'Attilo, who claim that they were legally obligated to pay a contingency fee of less than 11 percent on a settlement of $25 million, and that a 28 percent fee was unjustified.

"This is a baseless claim," Koskoff said. "They knew the fee was 28 percent [of the total award] all along; they knew it was going to be 28 percent when they agreed to the settlement. There were settlement offers made, which they agreed to, based on a 28 percent fee. They signed documents for the probate court agreeing the fee was going to be 28 percent. They never had any objection at any point."

Koskoff continued: "For them to make their first objection to the fee, two years after the settlement, in the form of this lawsuit is outrageous."

On March 21, 2003, the D'Attilos' signed a retainer agreement with the firm. It lists a statutory formula for legal fees that works out to less than 11 percent of the total award. However, it does provide for a 28 percent fee if the state's contingency fee statute "is not in effect at the time the money is to be distributed to the client." The plaintiffs say there has been no change to the statute.

But Koskoff said it is highly unusual for Connecticut personal injury lawyers to enter into agreements to pursue complex contingent fee litigation without obtaining a waiver of the statutory limits. He estimated that in 90 percent of complex personal injury cases, plaintiffs waive the statutory formula and agree to a higher amount. If the client waives the statutory

formula, Koskoff said, the legislature allows fees up to one-third of the entire recovery.

Defense lawyers for Koskoff and Day Pitney are attempting to move the case into binding arbitration, citing a clause in the retainer agreement that calls for arbitration in the event of a fee dispute. There have recently been a flurry of filings in the case.

On Jan. 28, the D'Attilos' legal malpractice lawyer, Howard A. Altschuler, of Bethany, filed 175 pages of legal documents, email transcripts and potential court exhibits in support of the 16-count civil complaint in New Haven Superior Court. The documents attempt to support the D'Attilos' allegations of scheming and "judge shopping" maneuvers to dupe the probate courts.

The case began with a huge win for the D'Attilo family. In May 2011, a Waterbury jury awarded the family $58.6 million, which is believed to be the largest medical malpractice verdict in state history. The lawsuit stemmed from allegations that an obstetrician didn't react properly to signs of a baby's distress during the birth process and, as a result of a delay in calling for a cesarean section, the child—now 11—ended up with brain damage that leaves him unable to walk, talk or feed himself.

The plaintiffs' lawyers were Koskoff partners Kathleen Nastri and James Horowitz. Nastri is a former president of the Connecticut Trial Lawyers Association. Because she made a $4 million offer of compromise before trial, the defendants faced more than $100 million in exposure, with prejudgment interest mounting.

On Jan. 11, 2012, Michael Koskoff called the D'Attilos, breaking the news that the insurers had made a $25 million offer. Relieved, the family signed a settlement document that does, in fact, list a 28 percent contingency fee for the firm—or $7 million. But the family maintains that because they had an existing fee agreement, they had no reason to think that the amount had changed and thus had no knowledge of the 28 percent figure when they signed the settlement document.

The family maintains the original 2003 retainer agreement should be in force. It allows a one-third contingency for the first $300,000 recovered, dropping to 25 percent for the next $300,000, and so on until all amounts more than $1.2 million have a 10 percent contingency fee. For a $25 million award, the fee is 10.64 percent, or $2.66 million.

"Exhibit 1" in the D'Attilos' amended complaint is an unsigned and undated draft KK&B retainer agreement. It would have charged a 33.33 percent contingency fee, and has a waiver clause agreeing to higher fees "in view of the complex nature of the case, the expense involved" and the expertise of KK&B. The unsigned document was apparently included in court documents in an attempt to show that the D'Attilos had knowledge that they could waive the standard fee agreement and chose not to.

A few days after the settlement agreement was signed, KK&B paid itself $7 million in fees and more than $1 million in cost reimbursements.

In an interview, Altschuler said there is no way that the D'Attilos' signing of the settlement form should have changed the terms of the initial retainer agreement. "The settlement accounting form wasn't listed as an amendment or an agreement," he said. "It doesn't have the waiver language required by statute to charge a higher contingent fee. Bottom line, it is not a contract."

To amend a fee agreement, the state statute requires written disclosure of the legislature's fee limits and an express waiver of that schedule. "There are a whole host of statutory protections"

Howard Altschuler

From: Colleen Fries <cfries@coynelaw.com>
Sent: Friday, July 25, 2014 1:16 PM
To: Law Offices of Howard Altschuler
Subject: Re: D'Attilo Authorization to Release Documents

I never did anything as guardian so I have nothing to give you.

Sent from my iPhone

> On Jul 25, 2014, at 1:13 PM, "Law Offices of Howard Altschuler" <lawofficesofhowardaltschuler@gmail.com> wrote:
>
> Hi Attorney Fries,
>
> This is a follow-up to my letter of July 17 (enclosed for your convenience). What is the status of my getting the requested documents? Thank you very much.
>
> Sincerely yours,
>
> Howard Altschuler
> Confidential Email
>
> This email message contains confidential information and is intended only for the individual named. If you are not the named email recipient, you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. E-mail transmission cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The sender therefore does not accept liability for any errors or omissions in the contents of this message, which arise as a result of e-mail transmission.
>
> From: Law Offices of Howard Altschuler [mailto:lawofficesofhowardaltschuler@gmail.com]
> Sent: Thursday, July 17, 2014 2:51 PM
> To: 'cfries@coynelaw.com'
> Subject: D'Attilo Authorization to Release Documents
> Sensitivity: Confidential
>
> Dear Attorney Fries:
>
> Thank you very much for your time on the phone.
>
> As I mentioned, I was recently retained by the D'Attilos for several matters, including representing the D'Attilos in probate court. I appeared for a status conference that took place in May but currently there is nothing pending in the case. I am in the process of reviewing the case and gathering documents as part of that review. It is my understanding that you were the GAL for a relatively short period of time in or about January/February 2012.
>
> I enclose an Authorization to Release Documents from the D'Attilos. I would respectfully request copies of any paper or electronic documents that you have, such as pleadings, emails etc. While I would prefer to get scanned copies via email, if it is easier for you, or if you would prefer to send paper copies, then please send the documents and email printouts to me at:
>

Howard Altschuler

From: Colleen Fries <cfries@coynelaw.com>
Sent: Wednesday, August 6, 2014 3:34 PM
To: 'Law Offices of Howard Altschuler'
Subject: RE: D'Attilo Authorization to Release Documents

Sensitivity: Confidential

I have obtained my file from storage and will send you a copy of the documents I have. The case was withdrawn from the Norwalk Probate Court before I filed a report on the application to compromise. I did not perform any services as guardian ad litem before the case was withdrawn from the Norwalk Probate Court.

-----Original Message-----
From: Law Offices of Howard Altschuler [mailto:lawofficesofhowardaltschuler@gmail.com]
Sent: Tuesday, August 05, 2014 4:05 PM
To: Colleen Fries
Subject: FW: D'Attilo Authorization to Release Documents
Importance: High
Sensitivity: Confidential

Hi Attorney Fries,

This is a follow-up to my email from July 25 requesting information regarding your appointment as the GAL in the D'Attilo case (please see below).

Please let me know if you have any questions but I would appreciate getting the information requested as soon as possible.

Sincerely yours,

Howard Altschuler
Confidential Email

This email message contains confidential information and is intended only for the individual named. If you are not the named email recipient, you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. E-mail transmission cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses.
The sender therefore does not accept liability for any errors or omissions in the contents of this message, which arise as a result of e-mail transmission.

-----Original Message-----
From: Law Offices of Howard Altschuler
[mailto:lawofficesofhowardaltschuler@gmail.com]
Sent: Friday, July 25, 2014 2:20 PM
To: 'Colleen Fries'
Subject: RE: D'Attilo Authorization to Release Documents
Importance: High
Sensitivity: Confidential

Hi Attorney Fries,

If you were never appointed GAL, please confirm. If you were appointed GAL, I would request a copy of the court appointment, and any document releasing you as GAL. Or, are you saying you had nothing whatsoever to do with the D'Attilo case at any time and were never in communications with any of the parties, the attorneys, or the court? When we spoke on the phone you did vaguely recall the case and you appeared surprised that it had been transferred from Norwalk to Bethel, so I assumed you had some connection to the case, but if that is a wrong assumption please let me know. Thank you.

Sincerely yours,

Howard Altschuler
Confidential Email

This email message contains confidential information and is intended only for the individual named. If you are not the named email recipient, you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. E-mail transmission cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses.
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convenience). What is the status of my getting the requested documents?
Thank you very much.
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> Sincerely yours,
>
> Howard Altschuler
> Confidential Email
>
> This email message contains confidential information and is intended
> only

COYNE, VON KÜHN, BRADY & FRIES, LLC

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Philip F. von Kühn
Edward P. Brady III
Colleen D. Fries
Kevin S. Coyne

Joseph M. Walsh
Bryce A. Petruccelli

Telephone (203) 378-7100
Facsimile (203) 378-7711

August 8, 2014

Howard Altschuler, Esquire
21 Perkins Road
Bethany, CT 06524

Re: ***Daniel Jacob D'Attilo***

Dear Mr. Altschuler:

As you requested, enclosed herewith are copies of the following which are contained in my file:

1. Application for Appointment of Mr. and Mrs. D'Attilo as guardians.

2. Application to Compromise Doubtful and Disputed Claim signed by Mr. and Mrs. D'Attilo.

3. Appointment of me as Guardian Ad Litem from the Norwalk Probate Court.

4. Letter from Kathleen Nastri to the Probate Court withdrawing the application for appointment of guardian and the application to compromise.

I never prepared a report on the application to compromise in view of the withdrawal of the application.

Very truly yours,

Colleen D. Fries

CDF/la
Enclosures

Law Offices of Howard Altschuler

21 Perkins Rd.
Bethany, CT 06524
Voice: (234) 567-9897
Fax: (815) 846-1664
Website: www.legal-malpractice.com
Email: legalmalpractice@gmail.com

ADMITTED:

STATE COURTS:
CT, NJ, NY, PA

FEDERAL APPELLATE COURTS:
UNITED STATES SUPREME COURT
2ND CIR. CT. OF APPEALS
3RD CIR. CT. OF APPEALS
9TH CIR. CT. OF APPEALS

FEDERAL TRIAL COURTS:
SOUTHERN DISTRICT OF NEW YORK
EASTERN DISTRICT OF NEW YORK
DISTRICT OF CONNECTICUT
DISTRICT OF NEW JERSEY

FEDERAL BANKRUPTCY COURTS:
DISTRICT OF CONNECTICUT
SOUTHERN DISTRICT OF NEW YORK

New York Office:
281 Garth Rd.
Building C- 3D
Scarsdale, NY 10583
Please Reply to Bethany Office

October 17, 2015

Karyl L. Carrasquilla, Esq.
Chief Disciplinary Counsel
Office of Chief Disciplinary Counsel
100 Washington Street, is a disguise that Hartford, CT 06106
Via Email Karyl.Carrasquilla@jud.ct.gov

Dear Attorney Carrasquilla:

First, regarding scheduling for a possible December hearing, as of now, I am unavailable on December 3, 4, 14, and 17.

Second, as I understand it, the only additional documentation provided to you by the respondents was a copy of the May 8, 2012 (11:36 a.m.) computer printout that they had originally submitted with their grievance reply. Though I have a copy of that particular document, I would request a copy of whatever they have turned over to you, including copies of any letters from Mr. Nuzzo.

Third, and foremost, this is to confirm our conversation late Friday afternoon and to register my objection and even greater concern as to what I understand is about to unfold. If I misunderstand, please let me know. I request an opportunity to meet with you to go over the totality of the evidence prior to a final decision on your part regarding a settlement offer or presentment.

You told me that you were thinking of filing additional allegations against Kathleen Nastri and Michael Koskoff for violations of Rules 1.5(b) (basis of fees), 1.5(c) (contingency fee in writing), and 1.15(e) (prompt delivery of client funds and accounting) and that you would not be pursuing Rule 1.6 (confidentiality) and 1.15(c) (co-mingling funds) claims (the only two specific rules mentioned by the Panel). Though the Panel's Finding of Fact #23 stated there was a conflict of interest, you did not mention 1.7 (the conflict of interest related to simultaneous representation of Danny and his parents in Probate Court).

I understood from our conversation that you will not make recommendations to the Committee regarding penalty until the conclusion of any hearing and that you would be open to hearing the evidence. However, I also understood from your comments that based upon all the information you have reviewed (including all of the documents and summaries I sent you), that you presently believe it is likely that there is only going to be clear and convincing evidence meriting a request for a reprimand even after a hearing.

As a result, you said that you intended to offer the respondents an opportunity to settle this entire grievance without a hearing in exchange for their accepting a reprimand. You told me you do not believe the offer would be accepted. It is my understanding such a settlement would have to be presented to the Committee for approval. I told you that my clients would strongly object to such an offer or resolution. You indicated that my clients would have an opportunity to present their objection directly to the Grievance Committee prior to the approval or disapproval of any settlement. You also told me you would not be requesting restitution as part of the settlement offer and would not request restitution as part of the hearing.

It is difficult to know where to begin in responding to what you told me but let me start with the undisputed facts involving Mr. Forman since that is a very straightforward, documented, and glaring issue.

FORMAN: I presented you with documentary evidence that the respondents effectively misappropriated somewhere between $45,712.92 and $48,712.92, when it deducted $68,712.92 for Mr. Forman's fees although, according to Forman's sworn testimony in May 2011, his total fees would be somewhere between $23,000-$25,000.

I take it from our conversation that the respondents provided no documentation or explanation regarding Forman. **If this grievance involved nothing other than the Forman issue, there is clear and convincing evidence that the respondents intentionally misappropriated tens of thousands of dollars for legal costs they did not and could not have incurred**.

On PDF page 23 of the documents that I previously sent you, the transcript states that Forman's company had billed the Koskoff firm approximately $1.5 million for 65 cases prior to the D'Attilo case. Significantly, this works out to be $23,076 per case. In other words, even without the sworn testimony of Mr. Forman as to how much he was going to charge in the D'Attilo case, it would have been extraordinary for his fees to be nearly $70,000 for a single case. As it turned out, the amount is even greater than that, $82,238.42 to be exact (see endnote[i]).

The respondents had to have known that this charge was illegitimate even if Forman actually billed for it. An invoice from Forman for $68,712.92 would have stood out like a sore thumb for the Koskoff firm since it was approximately three times what Forman charged on average for 65 other cases. Of course, the overall issue raised related to this is the deduction of more than $600,000 in legal costs for which there is no underlying documentation. If the Koskoff respondents quadruple charged for Forman (see endnote), how much extra did they charge for the other experts and for the other expenses? How often have they done this for other clients?

If there is no documentable legitimate explanation for this charge with this particular expert, there should be an assumption that all of the charges have been overstated and therefore there should be ethical repercussions and restitution for all undocumented expenses. Yet it is my understanding you are not going to ask for any restitution even as part of a settlement offer.

I am also concerned that given the facts related to the undocumented charges for more than $600,000 in legal costs (see endnote as well), that you said nothing about requesting as part of any settlement that KKB submit to periodic audits and ongoing supervision of their trust accounts. You also gave no indication that there is going to be an investigation of KKB's overall handling of client funds despite the fact that there was

a settlement with the Grievance Committee in 2011 regarding KKB's billing procedures. There is no reason to believe that KKB's billing problems only occurred in this case.

INTERNAL DOCUMENTS: I am very concerned as to why, prior to offering the respondents a way out of this by a simple reprimand with no restitution, you have not requested the internal documents that have previously been set aside, are easily available, and likely contain relevant information. I am particularly concerned because when we met in August, you explicitly told me that you would ask not only for documentary evidence regarding billing but all emails. Yet, even without obtaining what is likely crucial evidence easily available to you simply by requesting it, you are going to offer a simple reprimand with no other requirements or conditions. This is objectionable and I ask you to reconsider.

CLEAR AND CONVINCING EVIDENCE: The primary reason I am requesting an additional meeting with you is I do not understand how you reached the conclusion that there is not clear and convincing evidence that the respondents intentionally charged 28% when they knew they were not entitled to do so.

You made a reference to the fact that the litigation had been going on for nine years but I don't understand what relevance that has. Kathleen Nastri admitted in her grievance reply that she had never seen the retainer agreement until she read it in November 2011. Ms. Nastri is a highly experienced attorney, and no attorney of any experience level could read the March 21, 2003 retainer agreement and have a good faith belief that 28% was the appropriate amount in May 2012. If the attorney reading the agreement had no familiarity with the fee statute being referred to, a simple Google search of "contingency fee statute Connecticut" would list 52-251c as the first search result (which you can find here, along with a summary of the legislative history).

Moreover, the panel made three key findings that are indicative of the clear and convincing evidence that the respondent intentionally defrauded the clients:

- #5: "The fee agreement signed on March 21st, 2003 is the only signed fee agreement between the Complaints and the Respondents law firm"
- #19: "The Grievance Panel has not received any written explanation of the Attorneys fees charged, other that [sic] this signed settlement authorization"
- #22 "Other than a signed settlement statement agreement the Respondent has not submitted any further documentation to show that the Complainant concerns over the Attorney fees were satisfied"

The grievance panel received a thirty page single-spaced, detailed written explanation by the respondents. Findings of Fact #19 and #22 are the Panel's rejection of the respondent's explanation. The Panel is more than justified in rejecting their explanation since the claim that the 2005 amendment triggered the 28% is, on its face absurd (even apart from the fact that claim is directly contradicted by the position the respondents took in the civil case that the 2005 amendment was irrelevant and should be deleted from the complaint, as well as their grievance admission that the retainer agreement says nothing about the waiver). How then is it possible respondents are going to be allowed to walk away from this with a simple reprimand without any requirement of restitution when they ended up with $4.6 million in their pockets over and above what they would have been entitled to under the retainer agreement (putting aside §52-251(g))?

That money was not KKB's to keep. The grievance panel and you should recognize this without qualification and take action based upon this indisputable fact. I am unaware of any rule or case law that says your office and the Grievance Committee do not have the power to impose conditions or penalties on attorneys simply because there is pending litigation. If there is such authority, please let me know. If there is no such authority, first and foremost my clients should be made whole by the Grievance Committee and your office, which includes the ordering of restitution or demanding it as part of any settlement.

This case has and will continue to receive substantial publicity. An offer of settlement without a demand for restitution will send the wrong message to the Connecticut bar and to the public and I would respectfully request that we meet to discuss to reconsider your approach.

Sincerely yours,

Howard Altschuler

---

[i] I enclose an excerpted copy of the May 2012 computer printout, this time with entries marked for either Mr. Forman or his company Comprehensive Rehabilitation Associates. There are payments indicated for

- 7/28/2005: $1,500.00 retainer for Larry Forman (PDF 111)
- 9/9/2006: $4,459.03 for Comprehensive Rehabilitation Consultants, Inc. (PDF 111)
- 1/1//2008: $1172.60 for CRCI (PDF 112)
- 4/29/2008: $2,211.07 for CRCI (PDF 113)
- 8/11/2008: $2,091.40 for CRCI (PDF 113)
- 11/15/2008 $2,091.40 for CRCI (PDF 113)
- Handwritten twice, no date: $68,712.92 (PDF 110, 114)

for a total of **$82,238.42** ($68,712.92 + $13,525.5) deducted from client trust funds by the respondents for Mr. Forman.

As you can also see, there are two duplicate payments of $2,091.40. In Mr. Nuzzo's May 19, 2015 letter to me claiming there had been a comprehensive review of finances and a discovery that the respondents had overcharged by $1636.59 (PDF 116), that is based upon the duplicate payments listed on PDF 117. Mr. Nuzzo does not list the duplicate payment to CRCI, which means the actual amount illegitimately deducted for duplicate and other cost admitted to by the respondents is at least $3,727.99.

As I pointed out to you, the computer printout (which allegedly was printed out in May 2012, a year after Mr. Forman testified and the jury rendered its decision), did not actually have any computer entries for Mr. Forman, but only two handwritten entries for $68,712.92. See attached, PDF 110, 116. Even assuming that the computer printout accurately reflects data entered by the Koskoff firm contemporaneously with actual costs incurred, if the firm had received an invoice in May 2012, where is it and why was it written in by hand rather than entered into the computer?

More importantly, however, even if there is such an invoice (which has not been turned over to you or to me), there is no record in any of the tens of thousands of pages of documents turned over to me by KKB of any work done by Mr. Foreman after his trial testimony in May 2011. At his hourly rate, he would have had to have done more than 250 hours of work to account for an extra $48,000 in fees (even putting aside whether he could bill for work that was not possible to use since the trial was over in May 2011). See PDF pg. 108 indicating that the April 21, 2011 report was the "final" report submitted by Mr. Forman.

COMPREHENSIVE REHABILITATION CONSULTANTS, INC.

Lawrence S. Forman

Certified Rehabilitation Administrator
Certified Rehabilitation Counselor
Certified Disability Management Specialist
Certified Case Manager
Certified Work Adjustment and Vocational Specialist
Fellow International Academy of Life Care Planners
Medicare Set-Aside Consultant Certified
Qualified Rehabilitation Provider

MEMORANDUM

Diagnostic & Evaluation Services

Assessment of Home & Work Modifications & Accommodations

Continuum of Care Planning

Vocational Evaluations & Job Placement Assistance

Needs Research

Case Management/ Advocacy

Guardianship Planning & Support

Rehabilitation & Habilitation Counseling

Disability Management

Habilitation & Rehabilitation Administration

Into the Future Planning

TO: Kathleen Nastri, Esq.

FROM: Lawrence S. Forman, M.Ed., J.D.
CRA, CRC, CDMS, CCM, CVE, FIALCP, MSCC, QRP

DATE: April 21, 2011

RE: Daniel D'Attilo

Enclosed please find a copy of our final report dated April 21, 2011, which we have prepared regarding the above-referenced client.

The revisions to this report are the result of additional information received from Daniel's treating therapists and teacher and they are as follows:

Therapy
Added comments for equestrian therapy

Education and Training
Changed to (St. Vincent's Special Needs Services) Special Education School and changed comments

Equipment for Activities of Daily Living
Added comments for adjustable bath chair (pediatric) and Traum-Aid shower/commode chair

Positioning Rehab Equipment
Added comments for prone stander (44"-59") and prone stander (57"-72")

Education Management
Changed frequency, cost, vendor, and added comments for communication aid

Orthopedic Equipment
Added comments for ankle foot orthosis custom made and knee extension splints
Deleted gait trainer
Changed comments for Hart walker
Changed to Dynamic Movement Orthoses (DMO) and added comments

Mobility Equipment/Accessories
Changed comments for manual wheelchair/Quickie/tilt-in space option (IRIS) to include: armrest, swing-away, footrests, footplates w/shoe holders, caster wheels, rear wheel axle plates, wheel lock, airless inserts, hip abductor, adductor guides, laterals & chest harness
Changed comments for TDX 3 power wheelchair (w/MK6i electronics) w/adjustable rehab seat, tilt & back angle, fixed armrests, pneumatic tires, push button positioning strap, battery tray, swing-away footrests, footplates with shoe holders, hip abductor/adductors, chest harness & laterals

Leisure/Recreation/Exercise Equipment
Changed comments for adapted tricycles

Information Review.... page
Added: Therapist Questionnaire completed by Cynthia Zmuda, P.T., and Stacey Canale, P.T., Physical Therapy
Therapist Questionnaire completed by Betty Jeanne Nelson, M.S., CCC-SLP, Speech/Language Pathology
Teacher Questionnaire completed by William J. Kiley, Jr., Special Education

Also, enclosed please find Dr. Karen Laugel's review of our report dated April 5, 2011.

Thank you.

LSF/ns

Enclosures

cc: Gary Crakes, Ph.D.



D'Attilo, Ms. Cathy
Case #: 202328 ( )
Case Type: MEDMAL
Class: B
DOI: 02/02/2003
Assigned: KLN
LimDate:
Date Opened: 02/28/2003

5/8/2012 11:36 AM

6871 2.92

Value Code Report

Value Code	Dates of Service	Provider Of Service	Total Amount
COPIES	5/1/2003 - 5/1/2003 303520--250073	ChartOne, Inc.-Texas	124.76
COPIES	5/7/2003 - 5/7/2003 Inv.0305-5	Stamford Hospital	217.75
COPIES	7/8/2003 - 7/8/2003 Inv.#0306-14	Stamford Hospital	52.00
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COPIES	4/2/2004 - 4/2/2004 Inv.date 3/25/04	Pedi-Care, PC	6.25
COPIES	5/18/2004 - 5/18/2004 Inv.# 303520--304552	ChartOne, Inc.-Texas	42.10
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COPIES	3/31/2005 - 3/31/2005 2/28/05	Copying	5.40
COPIES	3/31/2005 - 3/31/2005 3/11/05	Copying	31.50
COPIES	5/3/2005 - 5/3/2005 Inv. 5/2/05	ATG Rehab	3.95
COPIES	5/3/2005 - 5/3/2005 Inv. #1473	Oronoque Pharmacy, Inc.	2.87
COPIES	5/3/2005 - 5/3/2005 Daniel's records	Rehabilitation Associates, Inc.	111.80

D'Attilo, Ms. Cathy
Case #: 202328 ( )
Case Type: MEDMAL
Class: B
DOI: 02/02/2003
Assigned: KLN
LimDate:
Date Opened: 02/28/2003

5/8/2012 11:36 AM

Value Code Report

Value Code	Dates of Service	Provider Of Service	Total Amount
EXPERTS	9/4/2003 - 9/4/2003 Review/Inv.date 8/26/03	Hermansen, M.D., Dr. Marcus C.	700.00
EXPERTS	1/12/2004 - 1/12/2004 Consultation	Pinshaw, M.D., Dr. Alan	1,500.00
EXPERTS	1/12/2004 - 1/12/2004 Inv.# 4834	TTE Transcripts Worldwide,Ltd.	35.00
EXPERTS	1/14/2004 - 1/14/2004 Review/Inv.date 12/11/03	Naidich, M.D., Dr. Thomas P.	1,100.00
EXPERTS	7/28/2004 - 7/28/2004 Inv.date 7/13/04	Scottsdale Pathology and Perinatology Consultants	1,050.00
EXPERTS	8/10/2004 - 8/10/2004 Review 8/2/04	Pinshaw, M.D., Dr. Alan	150.00
EXPERTS	11/5/2004 - 11/5/2004 Inv.date 11/4/04	Adler, M.D., Dr. Daniel G.	2,500.00
EXPERTS	7/28/2005 - 7/28/2005 Retainer	Forman, Mr. Lawrence S.	1,500.00
EXPERTS	12/15/2005 - 12/15/2005 retainer	BPM, Inc.	4,000.00
EXPERTS	6/1/2006 - 6/1/2006 5/30/06	McCarthy, M.D., Dr. Joan	1,242.50
EXPERTS	6/29/2006 - 6/29/2006 6/7/06	Schifrin, M.D., Dr. Barry S.	625.00
EXPERTS	9/9/2006 - 9/9/2006 6/15/06	Comprehensive Rehabilitation Consultants, Inc.	4,459.03
EXPERTS	9/19/2006 - 9/19/2006 retainer	Barnes, M.D., Dr. Steven D.	3,000.00
EXPERTS	9/20/2006 - 9/20/2006 retainer	Stephenson, M.D., Dr. Donna	350.00
EXPERTS	10/12/2006 - 10/12/2006 10/10/06	Barnes, M.D., Dr. Steven D.	8,000.00
EXPERTS	11/21/2006 - 11/21/2006 11/14/06	Neurology Associates, PC	3,150.00
EXPERTS	12/21/2006 - 12/21/2006 12/20/06 TC	Stephenson, M.D., Dr. Donna	175.00
EXPERTS	2/15/2007 - 2/15/2007 Expert retainer	Latimer, M.D., M. Elizabeth	2,000.00
EXPERTS	3/16/2007 - 3/16/2007 3/14/07 stmt	Barnes, M.D., Dr. Steven D.	5,500.00

D'Attilo, Ms. Cathy
Case #: 202328 ( )
Case Type: MEDMAL
Class: B
DOI: 02/02/2003
Assigned: KLN
LimDate:
Date Opened: 02/28/2003

5/8/2012 11:36 AM

Value Code Report

Value Code	Dates of Service	Provider Of Service	Total Amount
EXPERTS	4/26/2007 - 4/26/2007 4/21/07 stmt.	Hiatt, M.D., Dr. I. Mark	2,612.50
EXPERTS	5/2/2007 - 5/2/2007 Retainer	Beverly Newborn Medical Group, Inc.	1,500.00
EXPERTS	5/14/2007 - 5/14/2007 Balance Retainer	Beverly Newborn Medical Group, Inc.	500.00
EXPERTS	6/4/2007 - 6/4/2007 Retainer	Easterling, M.D., Dr. Thomas R.	1,000.00
EXPERTS	6/28/2007 - 6/28/2007 6/26/07 stmt.	Barnes, M.D., Dr. Steven D.	4,500.00
EXPERTS	6/28/2007 - 6/28/2007 6/20/07 stmt.	Ehrenkranz, M.D., Dr. Richard	750.00
EXPERTS	7/5/2007 - 7/5/2007 #07059	Boyd, M.D., Dr. Theonia K.	1,425.00
EXPERTS	8/2/2007 - 8/2/2007 7/27/07 stmt.	McCarthy, M.D., Dr. Joan	5,166.50
EXPERTS	8/2/2007 - 8/2/2007 7/26/07 stmt.	Pomerance, M.D., Dr. Jeffrey L.	1,208.00
EXPERTS	8/16/2007 - 8/16/2007 7/23/07 stmt.	BPM, Inc.	125.00
EXPERTS	8/24/2007 - 8/24/2007 8/22/07 stmt.	Barnes, M.D., Dr. Steven D.	2,500.00
EXPERTS	8/30/2007 - 8/30/2007 8/6/07 stmt.	Gurewitsch, M.D., Dr. Edith D.	167.50
EXPERTS	10/25/2007 - 10/25/2007 10/19/07 stmt.	Pomerance, M.D., Dr. Jeffrey L.	2,250.00
EXPERTS	12/10/2007 - 12/10/2007 11/2/07 stmt.	BPM, Inc.	9,900.00
EXPERTS	12/20/2007 - 12/20/2007 stmt.	Easterling, M.D., Dr. Thomas R.	500.00
EXPERTS	1/10/2008 - 1/10/2008 1/2/08 stmt.	BPM, Inc.	1,200.00
EXPERTS	1/11/2008 - 1/11/2008 12/21/07	Comprehensive Rehabilitation Consultants, Inc.	1,172.60
EXPERTS	1/24/2008 - 1/24/2008 1/11/08 stmt.	Barnes, M.D., Dr. Steven D.	3,500.00
EXPERTS	2/28/2008 - 2/28/2008 2/12/08 stmt.	Hiatt, M.D., Dr. I. Mark	4,337.50

D'Attilo, Ms. Cathy
Case #: 202328 ( )
Case Type: MEDMAL
Class: B
DOI: 02/02/2003
Assigned: KLN
LimDate:
Date Opened: 02/28/2003

5/8/2012 11:36 AM

Value Code Report

Value Code	Dates of Service	Provider Of Service	Total Amount
EXPERTS	3/10/2008 - 3/10/2008 prepayment for 3/17/08 depo	Easterling, M.D., Dr. Thomas R.	3,000.00
EXPERTS	3/27/2008 - 3/27/2008 3/18/08 stmt.	Easterling, M.D., Dr. Thomas R.	2,375.00
EXPERTS	4/24/2008 - 4/24/2008 4/22/08 stmt.	Barnes, M.D., Dr. Steven D.	5,500.00
EXPERTS	4/24/2008 - 4/24/2008 4/17/08 stmt.	Naidich, M.D., Dr. Thomas P.	1,050.00
EXPERTS	4/29/2008 - 4/29/2008 4/24/08	Comprehensive Rehabilitation Consultants, Inc.	2,211.07
EXPERTS	5/22/2008 - 5/22/2008 # 08055 & 08054	Boyd, M.D., Dr. Theonia K.	3,525.00
EXPERTS	6/5/2008 - 6/5/2008 6/2/08 stmt.	Easterling, M.D., Dr. Thomas R.	1,500.00
EXPERTS	6/19/2008 - 6/19/2008 # 116	Latimer, M.D., M. Elizabeth	3,250.00
EXPERTS	6/26/2008 - 6/26/2008 6/19/08 stmt.	Crakes, Ph.D., Gary	3,200.00
EXPERTS	7/3/2008 - 7/3/2008 7/1/08 - 2 stmts.	Barnes, M.D., Dr. Steven D.	14,000.00
EXPERTS	7/31/2008 - 7/31/2008 6/12/08 stmt.	Taff, M.D., Dr. Ingrid P.	3,275.00
EXPERTS	8/7/2008 - 8/7/2008 #121	Latimer, M.D., M. Elizabeth	1,800.00
EXPERTS	8/11/2008 - 8/11/2008 7/22/08	Comprehensive Rehabilitation Consultants, Inc.	2,091.40
EXPERTS	9/12/2008 - 9/12/2008 9/9/08 stmt.	Barnes, M.D., Dr. Steven D.	4,500.00
EXPERTS	9/18/2008 - 9/18/2008 # 08100 & #08099	Boyd, M.D., Dr. Theonia K.	4,550.00
EXPERTS	9/30/2008 - 9/30/2008 9/30/08 deposition	Latimer, M.D., M. Elizabeth	3,000.00
EXPERTS	10/9/2008 - 10/9/2008 10/3/08 stmt.	Ehrenkranz, M.D., Dr. Richard	1,400.00
EXPERTS	10/15/2008 - 10/15/2008 9/15/08	Comprehensive Rehabilitation Consultants, Inc.	2,091.40
EXPERTS	11/13/2008 - 11/13/2008 # 104564	Fink & Carney	159.95

D'Attilo, Ms. Cathy	Case Type: MEDMAL	DOI: 02/02/2003	LimDate:
Case #: 202328 ( )	Class: B	Assigned: KLN	Date Opened: 02/28/2003

5/8/2012 11:36 AM

Value Code Report

Value Code	Dates of Service	Provider Of Service	Total Amount
TRAVEL-KKB	8/24/2011 - 8/24/2011 6/1/11	American Express	1,535.14
TRAVEL-KKB	9/13/2011 - 9/13/2011 8/1/11	American Express	69.30
TRAVEL-KKB	1/12/2012 - 1/12/2012 1/11/12 breakfast & lunch	Bitzer, Ms. Jane E.	143.92
TRAVEL-KKB	1/20/2012 - 1/20/2012 12/1/11	American Express	1,482.01
		SUBTOTAL FOR TRAVEL-KKB	$ 19,143.61

Totals for all value codes $ 566,351.81

Report Criteria:

All value codes
Value notes are included
Sorted by: party, value code, start date, provider name

from - 4 68,712.92

635,064.73

Howard Altschuler

From: Carrasquilla, Karyl <Karyl.Carrasquilla@jud.ct.gov>
Sent: Saturday, October 17, 2015 7:59 PM
To: Howard Altschuler
Subject: RE: Koskoff Grievance
Attachments: Additional allegations of misconduct .doc; Additional allegations of misconduct .doc

Attorney Altschuler,
Thank you for your letter and thoughts.
Please see attached. At this time, as discussed, this is what I intend to file on Monday.
I have not spoken with Attorney Nuzzo yet. We left messages for each other on Friday.
You misquote and/or mischaracterize some of the statements that I made to you in our telephone call on October 16, 2015.
I would be happy to speak with you further on this matter.
I will be in the office on Monday morning. Please call.
860-706-5054
Karyl L. Carrasquilla

From: Howard Altschuler [mailto:legalmalpractice@gmail.com]
Sent: Saturday, October 17, 2015 7:40 PM
To: Carrasquilla, Karyl
Subject: Koskoff Grievance

Dear Attorney Carrasquilla:

Please see the enclosed letter and attachment and let me know if you have any questions.

Sincerely yours,

Howard Altschuler

STATEWIDE GRIEVANCE COMMITTEE

CATHY & DOMENIC D'ATTILO
Complainant

GRIEVANCE NO. 15-0137

V.

KATHLEEN L. NASTRI
Respondent

DISCIPLINARY COUNSEL'S ADDITIONAL ALLEGATIONS OF MISCONDUCT

Pursuant to Practice Book § 2-35(d) the Disciplinary Counsel asserts the following additional allegations of misconduct as to Kathleen L. Nastri (hereinafter Respondent), juris number 305440:

1. Respondent committed professional misconduct, including but not limited to, violations of Rule 1.5(b)(c) of the Rules of Professional Conduct in that she failed to honor the terms of the March 21, 2003 fee agreement with the Complainants. Connecticut General Statute 52-251c was in effect at the time of a verdict and subsequent settlement of this matter.

2. Respondent committed professional misconduct, including but not limited to, violations of Rule 1.15(e) of the Rules of Professional Conduct in that she failed to render a full accounting explaining and providing proof/invoices/billing of the costs/expenses charged to the Complainants.

Respectfully submitted,

_____
Karyl L. Carrasquilla
Chief Disciplinary Counsel
100 Washington Street
Hartford, CT 06106
Phone: (860) 706-5054
Fax: (860) 706-5063

Office of Chief Disciplinary Counsel
Juris 422382
100 Washington Street
Hartford, CT 06106
--

CERTIFICATION

I hereby certify that a true copy of the foregoing has been mailed by first class mail, postage prepaid on this 19th day of October, 2015 to the following parties and counsel of record:

Attorney Howard Altschuler
21 Perkins Rd.
Bethany, CT 06524

Attorney Anthony Nuzzo Jr.
One Town Center
P.O. Box 747
Cheshire, CT 06410

_____
Karyl L. Carrasquilla
Chief Disciplinary Counsel

Office of Chief Disciplinary Counsel
Juris 422382
100 Washington Street
Hartford, CT 06106
--

Howard Altschuler

From: Carrasquilla, Karyl <Karyl.Carrasquilla@jud.ct.gov>
Sent: Saturday, October 17, 2015 8:01 PM
To: Howard Altschuler
Subject: RE: Koskoff Grievance

I will send you the Koskoff document. It is the same as the Nastri document.

From: Howard Altschuler [mailto:legalmalpractice@gmail.com]
Sent: Saturday, October 17, 2015 7:40 PM
To: Carrasquilla, Karyl
Subject: Koskoff Grievance

Dear Attorney Carrasquilla:

Please see the enclosed letter and attachment and let me know if you have any questions.

Sincerely yours,

Howard Altschuler

Howard Altschuler

From: Howard Altschuler <legalmalpractice@gmail.com>
Sent: Saturday, October 17, 2015 10:16 PM
To: 'Carrasquilla, Karyl'
Subject: RE: Koskoff Grievance

Hi Attorney Carrasquilla,

I will call on Monday. I did not intend to mischaracterize what you said, which is why I wrote to please correct me if I misunderstood. I look forward to speaking with you on Monday morning.

Sincerely,

Howard Altschuler

From: Carrasquilla, Karyl [mailto:Karyl.Carrasquilla@jud.ct.gov]
Sent: Saturday, October 17, 2015 7:59 PM
To: Howard Altschuler <legalmalpractice@gmail.com>
Subject: RE: Koskoff Grievance

Attorney Altschuler,
Thank you for your letter and thoughts.
Please see attached. At this time, as discussed, this is what I intend to file on Monday.
I have not spoken with Attorney Nuzzo yet. We left messages for each other on Friday.
You misquote and/or mischaracterize some of the statements that I made to you in our telephone call on October 16, 2015.
I would be happy to speak with you further on this matter.
I will be in the office on Monday morning. Please call.
860-706-5054
Karyl L. Carrasquilla

From: Howard Altschuler [mailto:legalmalpractice@gmail.com]
Sent: Saturday, October 17, 2015 7:40 PM
To: Carrasquilla, Karyl
Subject: Koskoff Grievance

Dear Attorney Carrasquilla:

Please see the enclosed letter and attachment and let me know if you have any questions.

Sincerely yours,

Howard Altschuler

Howard Altschuler

From: Carrasquilla, Karyl <Karyl.Carrasquilla@jud.ct.gov>
Sent: Monday, October 19, 2015 10:35 AM
To: Howard Altschuler (legalmalpractice@gmail.com)
Subject: Additional allegations of misconduct .doc
Attachments: Additional allegations of misconduct .doc

koskoff

STATEWIDE GRIEVANCE COMMITTEE

CATHY & DOMENIC D'ATTILO
Complainant

GRIEVANCE NO. 15-0140

V.

MICHAEL KOSKOFF
Respondent

DISCIPLINARY COUNSEL'S ADDITIONAL ALLEGATIONS OF MISCONDUCT

Pursuant to Practice Book § 2-35(d) the Disciplinary Counsel asserts the following additional allegations of misconduct as to Michael Koskoff (hereinafter Respondent), juris number 032237:

1. Respondent committed professional misconduct, including but not limited to, violations of Rule 1.5(b)(c) of the Rules of Professional Conduct in that he failed to honor the terms of the March 21, 2003 fee agreement with the Complainants. Connecticut General Statute 52-251c was in effect at the time of a verdict and subsequent settlement of this matter.

2. Respondent committed professional misconduct, including but not limited to, violations of Rule 1.15(e) of the Rules of Professional Conduct in that he failed to render a full accounting explaining and providing proof/invoices/billing of the costs/expenses charged to the Complainants.

Respectfully submitted,

_____
Karyl L. Carrasquilla
Chief Disciplinary Counsel
100 Washington Street
Hartford, CT 06106
Phone: (860) 706-5054
Fax: (860) 706-5063

Office of Chief Disciplinary Counsel
Juris 422382
100 Washington Street
Hartford, CT 06106
--

CERTIFICATION

I hereby certify that a true copy of the foregoing has been mailed by first class mail, postage prepaid on this 19th day of October, 2015 to the following parties and counsel of record:

Attorney Howard Altschuler
21 Perkins Rd.
Bethany, CT 06524

Attorney Anthony Nuzzo Jr.
One Town Center
P.O. Box 747
Cheshire, CT 06410

_____
Karyl L. Carrasquilla
Chief Disciplinary Counsel

Office of Chief Disciplinary Counsel
Juris 422382
100 Washington Street
Hartford, CT 06106
--

Howard Altschuler

From: Carrasquilla, Karyl <Karyl.Carrasquilla@jud.ct.gov>
Sent: Tuesday, October 20, 2015 3:10 PM
To: Howard Altschuler
Subject: RE: Koskoff Grievance

Attorney Altschuler,
I am still investigating and discussing this matter with Respondent's counsel. I will let be in contact with you shortly.

Karyl

From: Howard Altschuler [mailto:legalmalpractice@gmail.com]
Sent: Saturday, October 17, 2015 10:16 PM
To: Carrasquilla, Karyl
Subject: RE: Koskoff Grievance

Hi Attorney Carrasquilla,

I will call on Monday. I did not intend to mischaracterize what you said, which is why I wrote to please correct me if I misunderstood. I look forward to speaking with you on Monday morning.

Sincerely,

Howard Altschuler

From: Carrasquilla, Karyl [mailto:Karyl.Carrasquilla@jud.ct.gov]
Sent: Saturday, October 17, 2015 7:59 PM
To: Howard Altschuler <legalmalpractice@gmail.com>
Subject: RE: Koskoff Grievance

Attorney Altschuler,
Thank you for your letter and thoughts.
Please see attached. At this time, as discussed, this is what I intend to file on Monday.
I have not spoken with Attorney Nuzzo yet. We left messages for each other on Friday.
You misquote and/or mischaracterize some of the statements that I made to you in our telephone call on October 16, 2015.
I would be happy to speak with you further on this matter.
I will be in the office on Monday morning. Please call.
860-706-5054
Karyl L. Carrasquilla

From: Howard Altschuler [mailto:legalmalpractice@gmail.com]
Sent: Saturday, October 17, 2015 7:40 PM
To: Carrasquilla, Karyl
Subject: Koskoff Grievance

Dear Attorney Carrasquilla:

Please see the enclosed letter and attachment and let me know if you have any questions.

Law Offices of Howard Altschuler

21 Perkins Rd.
Bethany, CT 06524
Voice: (234) 567-9897
Fax: (815) 846-1664
Website: www.legal-malpractice.com
Email: legalmalpractice@gmail.com

ADMITTED:

STATE COURTS:
CT, NJ, NY, PA

FEDERAL APPELLATE COURTS:
UNITED STATES SUPREME COURT
2ND CIR. CT. OF APPEALS
3RD CIR. CT. OF APPEALS
9TH CIR. CT. OF APPEALS

FEDERAL TRIAL COURTS:
SOUTHERN DISTRICT OF NEW YORK
EASTERN DISTRICT OF NEW YORK
DISTRICT OF CONNECTICUT
DISTRICT OF NEW JERSEY

FEDERAL BANKRUPTCY COURTS:
DISTRICT OF CONNECTICUT
SOUTHERN DISTRICT OF NEW YORK

New York Office:
281 Garth Rd.
Building C- 3D
Scarsdale, NY 10583
Please Reply to Bethany Office

October 22, 2015

Karyl L. Carrasquilla, Esq.
Chief Disciplinary Counsel
Office of Chief Disciplinary Counsel
100 Washington Street, Hartford, CT 06106
Via Email Karyl.Carrasquilla@jud.ct.gov

Dear Attorney Carrasquilla,

Thank you for the update. I appreciate being kept in the loop. I also appreciate the time that you have spent on this and I realize you are beginning your tenure as Chief Disciplinary Counsel overseeing a case of significant magnitude while undoubtedly having other cases as well. I have been dealing with some deadlines since we spoke, so I did not have a chance to follow up to our conversation on Monday.

By the way, I did not mention this when we spoke, but in reviewing some grievance decisions and grievance settlements, there is a reference to at least one other rule that appears to have been violated, 1.16(d) (a lawyer shall… [surrender] papers and property to which the client is entitled…). There are numerous decisions where restitution has been made a condition of a grievance settlement. *See, e.g.*, Grievance 14-0137. In addition, there was at least one grievance settlement where the respondent was required to provide restitution for consequential damages (late fees and interest). *Desouza v. Sebbaduka* (09-1121). As I have previously stated, I also believe there were significant violations of 8.4.

Though your Friday email said that I had mischaracterized or misrepresented something you said, you did not mention any specific factual issues when we spoke on Monday. I am very interested in being accurate and understanding where things stand, particularly since you initially said you were going to file the charges on Monday, but now the investigation is continuing. If you believe there is anything inaccurate or incomplete in what I have written before or write today, please let me know. I wanted to confirm my understanding of our Monday conversation. Please let me know if I misunderstood. Among other things:

You agreed with me that the March 21, 2003 retainer agreement is unmistakably clear that it only would have permitted a 28% contingency fee if the fee cap statute had *not* been in effect in 2012. This means that there was one and only one possible permissible calculation pursuant to the March 21, 2003 retainer agreement: the respondents were unquestionably and indisputably obligated to apply the statutory tier in calculating contingency fees. That also means that the one and only correct calculation for fees under the March 21, 2003 retainer agreement for a $25 million settlement would have been $2,660,000, and not the $7 million actually taken by the respondents. Put another way, this means that in May 2012 the respondents distributed $4,340,000 to themselves that belonged to Danny, Domenic, and Cathy D'Attilo.

You also pointed out correctly that if KKB's retainer agreement actually said what they claimed it meant (28% would be due only if the fee cap statute was *in* effect *and* a waiver requirement was added), KKB would have had an obligation in 2005 to alert the D'Attilos in writing as to passage of the provision that triggered the 28%. Of course, KKB did no such thing.

Yet, you still indicated a great hesitancy in our Monday conversation to demand restitution as part of any settlement. By the end of our conversation you did say that you would take my views under consideration but made no commitment. You did acknowledge that you had full authority to demand restitution as part of any settlement of the grievance.

I remain concerned and perplexed by your willingness to consider offering a reprimand, with or without restitution. There is documentary evidence in your hand that these respondents deliberately defrauded the D'Attilos (plus two probate courts and a guardian ad litem) and are lying to the grievance panel.

For just one of many examples, you agree that anyone reading the agreement would have no ground to conclude that KKB was entitled to 28%. Yet, on page 14 of the KKB grievance response, respondents state: "it was not until the fee agreement was pulled out [in November 2011] that Attorney Nastri saw that it was not KKB's customary agreement **and that it provided for a 28% fee**. On November 29, 2011 Attorney Nastri spoke to Mrs. D'Attilo regarding the status of negotiations and the fee agreement. This conversation was memorialized in an email from Attorney Nastri to her partners".

Nastri's November 29, 2011 email states in part: "**I told her they had negotiated a 28% fee**, which would save Danny close to $1 million if the case settled for $18 million." Emphases added.

As you agreed, the March 21, 2003 agreement only permits the statutory tier (approximately 10%). This email is documentary evidence that Kathleen Nastri was defrauding Cathy D'Attilo: the 28% fee for the proposed settlement would not have *saved* Danny $1 million, as Nastri deceptively claimed, but would have *cost* Danny millions of dollars. Nastri obviously knew that the fee cap statute was in effect and obviously knew that 28% was not the correct amount. She had an obligation to point this out to her clients but failed to do so.

Domenic got as far as 11th grade, Cathy got as far as a high school diploma, and Kathleen Nastri not only deceived them, she wrote to Michael Koskoff, Joshua Koskoff, Jim Horwitz, and William Bloss with the specifics of the deception. However, the evidence presented in the grievance was not about a single email, but an ongoing course of conduct over a period of months to defraud the D'Attilos, two probate courts, and a guardian ad litem.

As a result of the deception, she and her partners ended up with millions of dollars that did not belong to them, but belonged to Cathy, Domenic, and Danny. That brings me once again to these internal documents: you have not provided me with any explanation as to why you are not asking Mr. Nuzzo to turn over the internal documents that were separated out by KKB more than a year ago and therefore would be easy to provide to you.

Even if you were not contemplating letting the respondents walk away from this with a reprimand, or if they decline to settle, I understood you to say that you are not intending to ask for these internal documents at any time, even before a hearing, if that should go forward. If I am wrong about that, please let me know.

Please note that if you are concerned the documents may be voluminous, I am willing to come down to your office, review them and alert you to any documents of relevance. I understand that you probably have a heavy caseload. However, a grievance of this magnitude should not be settled or litigated for a reprimand without obtaining all crucial documents. I believe that the end result of this case will have a far-reaching impact on the legal profession in Connecticut and the public's perception of the profession. Therefore, I would really like to understand the specific reason you have not asked for these documents though I have requested this for months.

On a separate issue, although you expressed concern about KKB's accounting procedures, I am also perplexed you might offer a reprimand without having obtained in accounting for more than $600,000 in legal expenses, and having evidence presented to you in the form of Mr. Foreman's sworn testimony, that KKB deducted more than $82,000 for what Mr. Foreman testified at the conclusion of all of his work would be a $23,000-$25,000 expense.

KKB is the same firm that entered into an agreement with the grievance committee in 2011 regarding their defective accounting procedures. KKB probably has had thousands of clients. If the D'Attilo case resulted in more than $600,000 in charges for costs, undoubtedly KKB has charged other clients tens of millions of dollars over time for costs. The Foreman "overcharge" alone is nearly $60,000, almost 10% of the more than $600,000 in undocumented expenses. Whether the result of incompetence in accounting or intentionality, there may be millions of dollars of client funds that are being taken from KKB clients for costs that are unjustified and undocumented. Yet, you appeared on Monday to be on the brink of letting these attorneys walk away from this with a reprimand and not having to pay a penny of restitution for the legal fees or the undocumented legal costs that they charged for.

As I have told you, I have never been involved in the grievance process before on either end. Unfortunately, I believe there have been significant failures throughout this process. I gather from what I was told by Ms. Sutton and then you, there was consternation in your office with the initial KKB panel's decision. We have not talked about the Day Pitney decision yet, though I will address that in the relatively near future. Hopefully, this KKB grievance is not moving towards reprimand without there first being a full and complete investigation of all the facts, including all of the internal documents, and with full restitution as an integral part of any settlement or decision.

Sincerely yours,

Howard Altschuler

Howard Altschuler

From: Carrasquilla, Karyl <Karyl.Carrasquilla@jud.ct.gov>
Sent: Thursday, October 22, 2015 2:58 PM
To: Howard Altschuler (legalmalpractice@gmail.com); Nuzzo, Anthony (Anuzzo@nuzzo-roberts.com)
Subject: Hearings/Koskoff and Nastri

Hello,
I know that I had told both of you that I expected that the hearings would be scheduled for December.
We just received December calendar and cases are not on it.

Karyl L. Carrasquilla

Howard Altschuler

From: Howard Altschuler <legalmalpractice@gmail.com>
Sent: Wednesday, November 11, 2015 11:34 AM
To: 'Carrasquilla, Karyl'
Subject: RE: Hearings/Koskoff and Nastri

Hi Karyl,

This is a follow-up to my voicemail message of October 27. It is unclear to me from your email below whether the statewide grievance committee is moving forward with a hearing just based on the panel's decision even though you have not yet filed additional allegations. I also did not receive a copy of the documents/correspondence from KKB.

Please call or email when you have a chance.

Thanks.

Sincerely yours,

Howard Altschuler
203-467-5577

From: Carrasquilla, Karyl [mailto:Karyl.Carrasquilla@jud.ct.gov]
Sent: Thursday, October 22, 2015 2:58 PM
To: Howard Altschuler (legalmalpractice@gmail.com) <legalmalpractice@gmail.com>; Nuzzo, Anthony (Anuzzo@nuzzo-roberts.com) <Anuzzo@nuzzo-roberts.com>
Subject: Hearings/Koskoff and Nastri

Hello,
I know that I had told both of you that I expected that the hearings would be scheduled for December.
We just received December calendar and cases are not on it.

Karyl L. Carrasquilla

Howard Altschuler

From: Howard Altschuler <legalmalpractice@gmail.com>
Sent: Thursday, November 12, 2015 4:37 PM
To: 'Carrasquilla, Karyl'
Subject: Hearings/Koskoff and Nastri

Hi Karyl:

When we spoke last time (on Oct. 20), you told me that you were going to send me documents that you received from Attorney Nuzzo, but I have not received them. Please let me know if you are intending to send them. If they have been scanned, sending them by PDF is fine.

I will be sending you a letter later today or tomorrow regarding our conversation today.

Thanks,

Howard

Howard Altschuler

From: Howard Altschuler <legalmalpractice@gmail.com>
Sent: Monday, November 16, 2015 10:26 AM
To: 'Carrasquilla, Karyl'
Subject: Phone appointment

Hi Karyl,

I called at 10:00, and 10:20 for our 10 am phone appointment.

Please call me at your convenience, at 234-567-9897. If you get my voice mail, I will call back asap.

Thanks,
Howard Altschuler

Law Offices of Howard Altschuler

21 Perkins Rd.
Bethany, CT 06524
Voice: (234) 567-9897
Fax: (815) 846-1664
Website: www.legal-malpractice.com
Email: legalmalpractice@gmail.com

ADMITTED:

STATE COURTS:
CT, NJ, NY, PA

FEDERAL APPELLATE COURTS:
UNITED STATES SUPREME COURT
2ND CIR. CT. OF APPEALS
3RD CIR. CT. OF APPEALS
9TH CIR. CT. OF APPEALS

FEDERAL TRIAL COURTS:
SOUTHERN DISTRICT OF NEW YORK
EASTERN DISTRICT OF NEW YORK
DISTRICT OF CONNECTICUT
DISTRICT OF NEW JERSEY

FEDERAL BANKRUPTCY COURTS:
DISTRICT OF CONNECTICUT
SOUTHERN DISTRICT OF NEW YORK

New York Office:
281 Garth Rd.
Building C- 3D
Scarsdale, NY 10583
Please Reply to Bethany Office

November 17, 2015

Karyl L. Carrasquilla, Esq.
Chief Disciplinary Counsel
Office of Chief Disciplinary Counsel
100 Washington Street, Hartford, CT 06106
Via Email Karyl.Carrasquilla@jud.ct.gov

Dear Attorney Carrasquilla,

As per our appointment to speak yesterday, I called you at 10 a.m., then at 10:20 a.m. I also sent an email asking you to call me, but I did not hear from you. I am available to talk any time today. Please call me at your earliest convenience. This is also to confirm our conversation on November 12:

1. On or after October 22, 2015, you offered Kathleen Nastri and Michael Koskoff a reprimand for failure to "render a full accounting explaining and providing proof/invoices/billing of the costs/expenses charged to the Complainants."

2. If they accept this reprimand, there is not going to be anything mentioned about their conduct related to the retainer agreement or any of the other issues raised in the grievance complaint, or the findings of the local grievance panel.

3. You did not give them a deadline for responding but if they do not accept the offer, you will file the two additional charges in time for there to be a hearing in January (that is, you will file the additional allegations on or before November 30th).

4. You did not ask the respondents for restitution or require they place the fees in escrow.

5. You did not require that KKB take any remedial action related to how it tracks expenses or provide proof that no other client accounts have been similarly undocumented.

I was surprised (shocked actually) by what you told me on Thursday. When we discussed this matter on October 16 and 19, you did not even hint that you intended to offer a reprimand only for a failure to account for expenses. You assured me when we met in August that you would let me know in advance what your plans were so that I would have a chance to provide you with my clients' perspective on your proposed course of action. *See my August 18, September 30, October 17, and October 22 emails*.

The last I heard from you on October 22 is that you were "still investigating and discussing this matter with Respondent's counsel." I had left a phone message for you on October 27, and emailed you, but did not hear from you until November 11 when you wrote: "I know that I had told both of you that I expected that the hearings would be scheduled for December. We just received December calendar and cases are not on it." I thought that meant there was at least going to be a hearing on the panel's findings. I emailed you on November 11 and we spoke on November 12 but you had a deadline and we made an appointment to speak at 10 AM yesterday. I have not yet been told what your further investigatio**n** has turned up.

On October 17 I requested an opportunity to meet with you when I thought you were considering offering a reprimand for the two allegations. Now, I learn you offered a reprimand for only one allegation. I am asking you to reconsider and to withdraw your offer to the respondents and then to immediately file the two allegations you sent me on October 17 and to proceed with a full hearing on the matter.

As your office wrote recently in the brief filed with the Connecticut Supreme Court in the *Parnoff* case "One of the ways a court may accomplish the goal of protecting the public and the judicial system is by imposing a sanction that deters other attorneys from engaging in similar misconduct."

Even if there were no other issues other than KKB's failure to document $600,000+ in alleged expenses, as you are aware, KKB previously entered into a stipulation with the Disciplinary Counsel for unspecified accounting practices that were in violation of Section 2-27(b).[1] This is at least KKB's second time before the grievance committee on accounting issues. Yet, if they accept your offer, they will not face a hearing where they will have to explain their actions, provide actual documentation, or even explain their apparent misrepresentation to the then Disciplinary Counsel Patricia King in 2011 that KKB had taken "immediate steps to ensure its conformity with each of the requirements of Section 2-27(b)".[2]

If your offer is accepted and approved, the respondents will receive a slap on the wrist for this one narrow issue despite significant unexplained conduct regarding their current accounting procedures. For just one example, I gave you documentary evidence in the form of sworn testimony from Mr. Forman in May 2011 that his fee for his work as a KKB expert was going to be $23,000 to $25,000. The KKB respondents ended up deducting more than $82,000 for Forman's fees a year later with only a suspicious handwritten notation on a computer print-out.[3] Yet, you are not requiring that the respondents explain a penny of the $82,000 they took from the D'Attilos to pay a bill that should not have been more than $25,000, let alone the other $520,000 or so for which they also have no documentation, and their admitted (plus non-admitted) double billing charges of $3,727.99.[4] Given the fact that KKB has a previous grievance stipulation with your office for accounting issues, how does this protect KKB's other clients let alone the public?

Similarly, you indicated to me when we spoke in October, as well as in your October 17 allegation, that the respondents "**failed to honor the terms of the March 21, 2003 fee agreement** with the Complainants…"

You told me when we spoke that you agreed that the respondents were not entitled to deduct $7 million in legal fees but were only entitled to deduct the statutory tier ($2,660,000). Yet, if your offer is accepted, you are permitting the respondents to avoid any and all responsibility for taking $4.34 million that belongs to Danny, Cathy, and Domenic.[5]

I urge you to reconsider. Other attorneys have been suspended or disbarred for far less. What is of particular concern here is that there seems to be significant unequal application of ethical standards. For example, as you know, Attorney Ankerman ended up losing his license and going to jail for taking $35,000 more than he was entitled to from settlement funds. Attorney Parnoff is accused of taking about $313,000 plus accrued interest from settlement funds that he held in escrow for about six years. Those two attorneys together took less than 1/10 of the amount that the respondents took from the D'Attilos. Ankerman was disbarred and you are, in effect, asking the Connecticut Supreme Court to disbar Parnoff.

You have not even found ethical violations in KKB's failure to place the $4.34 million in escrow despite the fact that you are basing your case against Attorney Parnoff in large part on his fiduciary obligation to hold disputed funds in escrow. For example, on page 2 of the *Parnoff* brief, your office writes:

> "**Once the Defendant became aware that Yuille contested the fee he had an obligation to protect the disputed funds until the matter was resolved pursuant to Rule of Professional Conduct** 1 .15(f). Rule 1.15(f) states: "when in the course of representation a Lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claims interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute."[6]

On the issue of misappropriation, your office contends in the *Parnoff* brief:

> "**Misappropriation is the umbrella term** under which the different ways of misusing client funds are grouped. Black's defines it as "[t]he unauthorized, improper, or unlawful use of funds or other property for purposes other than that for which intended **including not only stealing but also unauthorized temporary use for [the] lawyer's own purpose, whether or not he derives any gain or benefit therefrom**." Black's Law Dictionary (8th ed. 2004). It thus includes defalcation, defined in Black's as "misappropriation of trust funds or money held in any fiduciary capacity, and failure to properly account for such funds," and conversion, which is '[a]ny unauthorized act which deprives an owner of his property permanently or for an indefinite time.'"

Your office is taking the position with Attorney Parnoff that it is irrelevant whether he knew about the consequences of his actions, whether he did this with or without integrity, or even whether he had any intention to deceive: "the only question is whether he knew that he was taking funds without approval **or agreement**."[7] Your own October 17 allegation of misconduct states: "The KKB respondents failed to honor the terms of the March 21, 2003 fee **agreement** with the Complainants.

If the *Parnoff* brief reflects your office's standard meriting the potential disbarment of Attorney Parnoff, it is inexplicable that you are not proceeding full speed ahead with allegations of misappropriation meriting disbarment against the KKB respondents.

Your predecessor filed a criminal complaint with the chief state's attorney in August 2014, alleging that Attorney Parnoff had misappropriated Ms. Yuille's funds. You agree that the KKB respondents were not entitled to take the $7 million legal fee, and you agree that they have not properly accounted for more than $600,000 in legal costs. Why is KKB's conduct not considered by you to be misappropriation meriting a hearing for suspension or disbarment based on your office's endorsement of the above definition of misappropriation?

While I objected to offering a reprimand, if a reprimand is what is offered, surely the respondents should be reprimanded for all of their unethical conduct, not just a narrow subset, and then, *only after a hearing* where these attorneys have to defend against the evidence that my clients presented to the local panel and to you regarding their intentionality related to legal fees and legal expenses. You previously told me that you were going to be open to considering harsher penalties if there was a hearing. By avoiding a hearing, by failing to demand that the respondents turn over the internal documents they have withheld, and by not notifying me in advance of your intention to offer a reprimand for only one issue, you offered KKB a settlement without having all the relevant facts.

In *Parnoff*, the client "was a minor at the time of the acts in question and so was extremely vulnerable. Since [Parnoff] had been practicing law since 1975, there is no question that he had substantial experience at the time of the misappropriation and, as a longstanding member of the legal profession, **must be held fully accountable for his ethical violations**." *Statewide Grievance Comm. v. Ankerman*, No. CV000802379, 2001 WL 34039473, at *6 aff'd, 74 Conn. App. 464 (2003).

In the D'Attilo case, Danny was eight years old at the time of settlement, and significantly disabled for life. Domenic went as far as 11th grade, and Cathy got as far as a high school diploma. Michael Koskoff was admitted to practice in 1966 and Kathleen Nastri was admitted in 1986. The respondents walked away from the case with $4,340,000 that did not belong to them, and then charged the D'Attilos more than $600,000 in undocumented legal expenses (including more than $82,000 for Mr. Foreman), among other things. For all of that and more, you are permitting them to resolve all issues by accepting a reprimand for their *second* violation of accounting practices. How does that hold them accountable for their ethical violations? What standard does that set for other attorneys in Connecticut?

When we spoke in October you noted correctly that if the respondents actually believed that the 2005 amendment permitted them to take 28%, they were under an ethical obligation to notify the D'Attilos in 2005 of this change in the law. Despite the evidence that the Koskoff respondents knew they were not entitled to take $7 million at the time that they took it, and that they did everything they could to keep this information from two probate courts and the guardian ad litem, you decided that they do not have to take any responsibility for their "transfer" of $4,340,000 in client funds, not even the most basic admission of responsibility via a reprimand, or placing that money in escrow. You also decided that despite KKB's past history of accounting violations, nothing more than a limited reprimand is merited.

I urge you to withdraw the offer and pursue the allegations that you told me (and wrote to me) were going to be filed on October 20. There should be a hearing on the merits. While I understand we will have an opportunity to make some kind of presentation to the Grievance Committee should the respondents accept your offer, that will be too little and too late. My clients intend to challenge in court the local panel's failure to forward to the Statewide Committee the dismissed claims that contain allegations of criminal misconduct as required by the Practice Book. My clients also intend to challenge the constitutionality of a system that

permits such wildly different outcomes for different attorneys violating the same ethical codes, and their lack of any due process rights as victims once the grievance process is started. My clients will also challenge an outcome that results in the KKB respondents receiving a tap on the wrist for one narrow issue. My clients will also be contacting state legislators to bring all of this and more to the attention of lawmakers and to the public.

In the meantime, I am deeply troubled that you, the new Chief Disciplinary Counsel for the State of Connecticut, are choosing to send the wrong message to the Connecticut bar and the Connecticut public with an offer made before getting all the relevant facts (and despite the overwhelming evidence already in your possession), and your failure to have KKB respondents answer these allegations at a full hearing under oath. What reassurances do Connecticut parents of significantly disabled children have that they will be protected from unethical conduct by lawyers if you, the Chief Disciplinary Counsel, effectively condone what you agree that the KKB respondents did: taking millions in unearned fees and failing to document $600,000+ in expenses? Please call to discuss these and other important issues.

Sincerely yours,

Howard Altschuler

ENDNOTES:

[1] I sent you information regarding this on August 24, 2015, pages 33-35 of the PDF file. There was a random audit of the Koskoff firm and "the SGC's auditors determined the Firm had not been in compliance with certain of the requirements of' Practice Book Section 2-27(b)." KKB represented to the Office of Chief Disciplinary Counsel at that time that it had undertaken "voluntary remedial action and immediate steps to ensure its conformity with each of the requirements of Section 2-27(b). As a result, Disciplinary Counsel concluded:

4. No funds of the Firm's clients, or any funds of any other persons or entities, were used in any fashion by any current or former attorney of the Firm, or otherwise were at risk.

5. Based upon the forgoing, and the fact that the Firm's non-compliance is not likely to re-occur, the interests of attorney discipline have been fully met, and therefore no order of discipline is warranted against the Firm or any of its attorneys, and the undersigned Office has entered into a stipulation with the Firm providing that it will recommend to the Court that it enter Judgment dismissing this proceeding. A copy of the parties' Stipulated Judgment of Dismissal is attached to this Petition.

Date: June 30, 2011

THE PETITIONER
OFFICE OF DISCIPLINARY COUNSEL

By: _____
Patricia A. King
Office of Chief Disciplinary Counsel
Juris No. 300752
100 Washington Street
Hartford, CT 06106
Phone 860-706-5055
Fax 860-706-5063
pking@ct.jud.gov

You have now been presented with evidence that KKB in fact is not in conformity with the requirements of Section 2-27(b). Moreover, you have also been presented with evidence that KKB has put substantial amounts of client funds at risk for the D'Attilos. It is unknown whether KKB's noncompliant accounting practices have put the funds of other clients at risk. And unless there is an investigation, this issue will go unaddressed despite your being on notice of this substantial and serious problem. Yet, you are willing to let the respondents walk away without any investigation of their accounting practices, or having to answer questions at a hearing, let alone providing restitution to the D'Attilos, or taking any steps to protect other past, present, or future KKB clients.

[2] A "public censor …. is really a public slap on the wrist." Mary Hacket, Misappropriation of Clients' Funds: Is Disbarment Always Justified! THE JOURNAL OF THE LEGAL PROFESSION, Vol. 12, pg. 80, n.34 (1987).

[3] Other attorneys have received harsher penalties for violations of §2-27(b) under various circumstances. *See, e.g.*, *Disciplinary Counsel v. Evans*, 159 Conn. App. 343, 348 (2015) (attorney who violated 2-27(b) by failing to provide a client with "a proper accounting of his fees and expenses", went on inactive status for substance abuse, and for reinstatement, was required to subject his practice to audits, with the ultimate punishment of reprimand or suspension depending on his compliance, among other conditions), *Disciplinary Counsel v. Miniter*, No. HHDCV094044362, 2009 WL 3086565, at *1 (disciplinary counsel sought restitution of **$1,500** for attorney who violated 2-27(a) and (b)), *Statewide Grievance v. Hanson*, No. CV044001315, 2004 WL 3106044, at *1 (required enrollment in law office management course, demonstrating implementation of policies that conform with 2-27(b), producing books and reconciliations for three months, for an attorney whose "continued practice does not pose an immediate or imminent risk of harm to the public or the judicial system"), *Statewide Grievance Comm. v. Baldwin*, No. CV010807111, 2001 WL 1560895, at *5 (three year suspension), *Statewide Grievance Committee v. Stephen N. Schaffer*, Docket No. CV 95 148902 (June 17, 1996, Karazin, J) (three month suspension for failure to properly maintain client's funds in his trustee account and by converting funds to his own use).

[4] I also provided you with evidence that KKB's supposedly comprehensive accounting of funds for which KKB could provide no documentation also overlooked a double payment of **$2,091.40** along with the double payment they admit to amounting to $1,636.59. Why no discipline or restitution for that? *See* my October 17, 2015 letter.

[5] Your additional allegation regarding the retainer issue states in full: "Respondent committed professional misconduct, including but not limited to, violations of Rule 1.5(b)(c) of the Rules of Professional Conduct in that [he/she] failed to honor the terms of the March 21, 2003 fee agreement with the Complainants. Connecticut General Statute 52-251c was in effect at the time of a verdict and subsequent settlement of this matter."

[6] Your office notes in your *Parnoff* brief that the trial court "found that no escrow order was necessary to trigger the Defendant's fiduciary obligation to hold the disputed funds in escrow", that the Defendant had a duty to be transparent in the handling of Yuille's funds", "that Yuille was entitled to notice and an accounting before the Defendant could take her money", and "that Defendant's testimony regarding his escrow account was incomprehensible." Pg. 6.

[7] As your office described it for the *Parnoff* case: "Applying the concept of knowing misappropriation to the present case, all that is necessary to prove the Defendant knowingly misappropriated Yuille's funds is clear and convincing evidence that 1) he knew that his claim to the funds held in trust was in dispute, …. Whether the Defendant had any regard at all as to the consequences of his actions is irrelevant. Whether the Defendant has or lacks integrity is irrelevant. Whether the Defendant intended to deceive his client is irrelevant. The question is also not whether the Defendant was acting reasonably or unreasonably when he took $363,960.87 in client's funds from the escrow and deposited them into his personal savings account; the only question is whether he knew that he was taking funds without approval or agreement."

As I previously pointed out to you and the panel, KKB's explanation regarding the retainer agreement as presented to the grievance panel is not merely "incomprehensible. *See, e.g.*, Attorney Greany's affidavit, Kathleen Nastri's November 29, 2011 email, and respondents' Motion to Strike, etc..

END OF NOTES

Law Offices of Howard Altschuler

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Bethany, CT 06524
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Website: www.legal-malpractice.com
Email: legalmalpractice@gmail.com

ADMITTED:

STATE COURTS:
CT, NJ, NY, PA

FEDERAL APPELLATE COURTS:
UNITED STATES SUPREME COURT
2ND CIR. CT. OF APPEALS
3RD CIR. CT. OF APPEALS
9TH CIR. CT. OF APPEALS

FEDERAL TRIAL COURTS:
SOUTHERN DISTRICT OF NEW YORK
EASTERN DISTRICT OF NEW YORK
DISTRICT OF CONNECTICUT
DISTRICT OF NEW JERSEY

FEDERAL BANKRUPTCY COURTS:
DISTRICT OF CONNECTICUT
SOUTHERN DISTRICT OF NEW YORK

New York Office:
281 Garth Rd.
Building C- 3D
Scarsdale, NY 10583
Please Reply to Bethany Office

November 17, 2015

CONFIDENTIAL

Paul E. Pollack, Esq.
Bai, Pollock, Blueweiss & Mulcahey, P.C.
Two Corporate Drive, Suite 950
Shelton, CT 06484
VIA FAX (203.925.8101) AND EMAIL: ppollock@baipollock.com

Dear Attorney Pollock,

I believe I have information that is relevant to Attorney Parnoff's appeal now before the Connecticut Supreme Court.

Since February 2015, I have been handling a grievance against certain attorneys, including Michael Koskoff and Kathleen Nastri (both from Koskoff, Koskoff, & Bieder), primarily on issues related to §52-251c. In July, the local panel found probable cause of professional misconduct against those two attorneys.

On or about October 22, 2015, the Chief Disciplinary Counsel made an offer to those attorneys for settling the grievance for a reprimand on a narrow subset of the issues raised (not related to §52-251c), an offer that I believe is directly at odds with the sanction the Chief Disciplinary Counsel's office is pursuing against your client.

If you would like additional information, please let me know that it will be handled confidentially by your office (that is, only used in legal/grievance proceedings or in attorney-client communications with Attorney Parnoff, and will not be communicated with anyone outside of your firm). For example, I sent Attorney Carrasquilla a detailed letter today outlining my objections to her offer, citing multiple portions of her Connecticut Supreme Court brief in the *Parnoff* case, and objecting to what I see as disparate treatment.

For background information, the initial grievance against KKB can be accessed online at this link starting on page E:126 to page E:167. (D'Attilo v. Koskoff, Koskoff, & Bieder, P.C., et al. Docket item #143.00). Please note: there is significant additional evidence that was obtained after the filing of the grievance, including KKB's response. In my opinion, that additional information raises significant questions as to why Attorney Koskoff and Attorney Nastri are being offered a partial reprimand to avoid a grievance hearing, while the Chief Disciplinary Counsel' office is appealing the appellate court's decision upholding the trial court's imposition of a reprimand for Attorney Parnoff.

Please let me know if you have any questions or want further information.

Sincerely yours,

Howard Altschuler

Howard Altschuler

From: Carrasquilla, Karyl <Karyl.Carrasquilla@jud.ct.gov>
Sent: Sunday, November 22, 2015 3:50 PM
To: Nuzzo, Anthony (Anuzzo@nuzzo-roberts.com)
Cc: Howard Altschuler (legalmalpractice@gmail.com)
Subject: D'Atillo hearings

Are on calendar for 1-7-16 at 9:30 a.m.

Reviewing committee is Tracie Molinaro, Sue Cousineau, Jonathan Shugarts.

Attorney Nuzzo, please advise if your clients will accept the 2-82 agreements that have been provided to you.

Thank you,
Karyl L. Carrasquilla

Howard Altschuler

From: Howard Altschuler <legalmalpractice@gmail.com>
Sent: Friday, December 4, 2015 11:47 AM
To: 'Carrasquilla, Karyl'
Subject: RE: D'Atillo hearings

Hi Karyl:

What is the current status?

Also, where is the January 7 meeting taking place?

Thanks,

Howard

From: Carrasquilla, Karyl [mailto:Karyl.Carrasquilla@jud.ct.gov]
Sent: Sunday, November 22, 2015 3:50 PM
To: Nuzzo, Anthony (Anuzzo@nuzzo-roberts.com) <Anuzzo@nuzzo-roberts.com>
Cc: Howard Altschuler (legalmalpractice@gmail.com) <legalmalpractice@gmail.com>
Subject: D'Atillo hearings

Are on calendar for 1-7-16 at 9:30 a.m.

Reviewing committee is Tracie Molinaro, Sue Cousineau, Jonathan Shugarts.

Attorney Nuzzo, please advise if your clients will accept the 2-82 agreements that have been provided to you.

Thank you,
Karyl L. Carrasquilla

Howard Altschuler

From:	Howard Altschuler <legalmalpractice@gmail.com>
Sent:	Friday, December 4, 2015 3:49 PM
To:	'Bowler, Michael'
Cc:	'Kulas, Stephen'; 'Eugene J. Riccio'
Subject:	D'Attilo grievances: Writ of Mandamus
Importance:	High
Sensitivity:	Confidential

Dear Attorney Bowler

I am going to be filing a writ of mandamus regarding the issue we previously corresponded about in July regarding P.B. §2-32(i).

Will you accept service on behalf of the Statewide Grievance Committee, in your official capacity as Statewide Bar Counsel, on behalf of the two local panels involved (and Attorney Riccio and Attorney Kulas in their official capacities as counsel for the two local panels and Attorney Riccio in his official capacity as chair)? Please confirm.

Please also confirm whether you will accept service via overnight mail and email, and will waive personal service by a marshal. If so, I will send you a tracking number when the mandamus is ready to be mailed and I will also email and mail copies to Attorney Riccio and Attorney Kulas.

Please let me know if you have any questions.

Sincerely yours,

Howard Altschuler
1-234-567-9897
cc: Attorney Riccio, Attorney Kulas

Howard Altschuler

From: Bowler, Michael <Michael.Bowler@jud.ct.gov>
Sent: Friday, December 4, 2015 3:52 PM
To: Howard Altschuler
Cc: Kulas, Stephen; 'Eugene J. Riccio'
Subject: RE: D'Attilo grievances: Writ of Mandamus

Sensitivity: Confidential

I will accept service only on behalf of the Statewide Grievance Committee. I do not represent the grievance panels.

Michael P. Bowler
Statewide Bar Counsel
Statewide Grievance Committee
287 Main Street, Second Floor, Suite Two
East Hartford, CT 06118-1885
Tel: (860) 568-5157 (X. 3362)
Direct Dial: (860) 290-3362
Fax: (860) 568-4953
Michael.Bowler@jud.ct.gov

From: Howard Altschuler [mailto:legalmalpractice@gmail.com]
Sent: Friday, December 04, 2015 3:49 PM
To: Bowler, Michael
Cc: Kulas, Stephen; 'Eugene J. Riccio'
Subject: D'Attilo grievances: Writ of Mandamus
Importance: High
Sensitivity: Confidential

Dear Attorney Bowler

I am going to be filing a writ of mandamus regarding the issue we previously corresponded about in July regarding P.B. §2-32(i).

Will you accept service on behalf of the Statewide Grievance Committee, in your official capacity as Statewide Bar Counsel, on behalf of the two local panels involved (and Attorney Riccio and Attorney Kulas in their official capacities as counsel for the two local panels and Attorney Riccio in his official capacity as chair)? Please confirm.

Please also confirm whether you will accept service via overnight mail and email, and will waive personal service by a marshal. If so, I will send you a tracking number when the mandamus is ready to be mailed and I will also email and mail copies to Attorney Riccio and Attorney Kulas.

Please let me know if you have any questions.

Sincerely yours,

Howard Altschuler
1-234-567-9897

Howard Altschuler

From: Howard Altschuler <legalmalpractice@gmail.com>
Sent: Friday, December 4, 2015 4:00 PM
To: 'Bowler, Michael'
Cc: 'Kulas, Stephen'; 'Eugene J. Riccio'
Subject: RE: D'Attilo grievances: Writ of Mandamus

Importance: High
Sensitivity: Confidential

Thanks. To clarify, will you accept service via email and overnight mail or do you require service by a marshal?

Also to clarify, as I understand it, you will accept service for (1) the Statewide Grievance Committee and (2) in your official capacity as Statewide Bar Counsel?

Sincerely,
Howard Altschuler

From: Bowler, Michael [mailto:Michael.Bowler@jud.ct.gov]
Sent: Friday, December 4, 2015 3:52 PM
To: Howard Altschuler <legalmalpractice@gmail.com>
Cc: Kulas, Stephen <Steven.Kulas@jud.ct.gov>; 'Eugene J. Riccio' <ejr@gulashandriccio.com>
Subject: RE: D'Attilo grievances: Writ of Mandamus
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Michael P. Bowler
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Howard Altschuler

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Sent: Friday, December 4, 2015 4:00 PM
To: 'Bowler, Michael'
Cc: 'Kulas, Stephen'; 'Eugene J. Riccio'
Subject: RE: D'Attilo grievances: Writ of Mandamus

Sensitivity: Confidential

Dear Attorney Kulas and Attorney Riccio:

As per Attorney Bowler's email below, would you accept email and mail service on behalf of your respective local panels, and in your official capacities as counsel (and chair)?

Sincerely,
Howard Altschuler

From: Bowler, Michael [mailto:Michael.Bowler@jud.ct.gov]
Sent: Friday, December 4, 2015 3:52 PM
To: Howard Altschuler <legalmalpractice@gmail.com>
Cc: Kulas, Stephen <Steven.Kulas@jud.ct.gov>; 'Eugene J. Riccio' <ejr@gulashandriccio.com>
Subject: RE: D'Attilo grievances: Writ of Mandamus
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I will accept service only on behalf of the Statewide Grievance Committee. I do not represent the grievance panels.

Michael P. Bowler
Statewide Bar Counsel
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From: Howard Altschuler [mailto:legalmalpractice@gmail.com]
Sent: Friday, December 04, 2015 3:49 PM
To: Bowler, Michael
Cc: Kulas, Stephen; 'Eugene J. Riccio'
Subject: D'Attilo grievances: Writ of Mandamus
Importance: High
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Dear Attorney Bowler

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IN THE SUPREME COURT OF THE STATE OF CONNECTICUT

Office of Chief Disciplinary Counsel -v- Lawrence Parnoff (SC#19535)

APPLICATION FOR LEAVE TO FILE BRIEF AMICI CURIAE, WITH APPENDIX

COMES NOW, Cathy D'Attilo, Domenic D'Attilo, and their son Daniel Jacob D'Attilo ("Applicants"), by their attorney Howard Altschuler, and respectfully move the Connecticut Supreme Court pursuant to Practice Book §67-7 for an order permitting them to file an *amici curiae* brief in the above-captioned case in support of Appellee's request for relief.[1]

Applicants will be impacted by the outcome of the Parnoff case. They also have factual information only available since November 20, 2015 that could mean the difference between disbarment and reprimand for Mr. Parnoff. This information should impact the Court's decision, both on the legal question that the Court is considering, and its specific application to Mr. Parnoff. The information will likely have an impact on other pending attorney misconduct grievances, including grievances filed by the Applicants. The public's confidence in the fairness of the Connecticut attorney-client grievance system is at stake

Given recent events, it would be a miscarriage of justice for the Office of Chief Disciplinary Counsel (OCDC) to obtain the relief it seeks against Mr. Parnoff regardless of this Court's determination of the legal question presented. It would be an even greater miscarriage of justice for the OCDC to permit other attorneys to avoid sanctions for professional misconduct that is more damaging to the integrity of the legal profession than Parnoff's misconduct:

[1] No parties to the Parnoff appeal were consulted regarding this motion and none contributed to its cost. The undersigned did make an attempt to contact Mr. Parnoff's attorney, without success. Applicants do not have any connection to anyone involved in Mr. Parnoff's case.

> "[M]aintenance of public confidence in this Court and in the bar as a whole requires the strictest discipline in misappropriation cases. That confidence is so important that mitigating factors will rarely override the requirement of disbarment. **If public confidence is destroyed, the bench and bar will be crippled institutions.** Functioning properly, however, in the best traditions of each and with full public confidence, they are the very institutions most likely to develop required reform in the public interest." *Matter of Wilson*, 409 A.2d 1153, 1157-1158, 81 N.J. 451, 461 (1979) (all emphases in quotations is added).

On March 21, 2003, Cathy and Domenic D'Attilo signed a medical malpractice retainer agreement with Koskoff, Koskoff, & Bieder ("KKB"). As in *Parnoff*, the KKB Retainer was subject to §52-251c fee cap (which permits about a 10% contingency fee). Danny D'Attilo was one month old at the time and significantly disabled for life. Domenic D'Attilo had gone as far as 11th grade and worked as a bricklayer. Cathy D'Attilo had a high school diploma.

Eight years later, a jury awarded the D'Attilos $58.6 million, the largest medical malpractice award in Connecticut history. In January 2012, the D'Attilos reached an agreement to settle for $25 million. KKB took $7,000,000 in legal fees, rather than the $2,660,000 permitted by the fee cap statute calculation.

In February 2015, the Applicants filed grievances against seven attorneys. In July 2015, a local panel found probable cause of professional misconduct against two of the KKB attorneys, Michael Koskoff (admitted to practice 1966) and Kathleen Nastri (admitted to practice 1986), both of KKB. *See Appendix pg. A1-A4*. The grievance against the KKB attorneys and Mr. Parnoff both involve retainer agreements subject to §52-251c. A5-A7.

The Applicants' grievances allege, *inter alia*, that the KKB and other attorneys misappropriated millions of dollars from the applicants by taking a 28% contingency fee rather than the 10%± fee cap set by §52-251c. In addition, the KKB attorneys did not obtain

and/or preserve original bills to verify or prove the accuracy or validity of more than $600,000 in alleged legal costs that the KKB attorneys deducted from the Applicants' trust funds.

After probable cause was found against the two KKB attorneys, the OCDC drafted two additional allegations of professional misconduct and told the undersigned that they were expected to be filed on October 20, 2015. A8-A9. However, on or about November 20, 2015, the OCDC informed the undersigned that it had not filed the charges, but instead, had offered the KKB attorneys a full settlement of the professional misconduct charges. A10. Did the KKB attorneys have to return the $4.34 million they took? Did they at least have to put those fees and the $600,000+ of ***unverifiable*** legal costs in escrow? Did they have to submit to an investigation of their fee agreement and accounting practices to see if other KKB clients were wrongfully charged 28% or unethically charged for costs for which KKB had no proof?

No, all the two KKB lawyers had to do was accept a limited reprimand *only* for failure to "render a full accounting explaining and providing proof/invoices/billing of the costs/expenses charged..." A8. That's it. Nothing else. Amazingly, the KKB attorneys would *not* even be reprimanded for violating §52-251c by deducting $4.34 million in fees *over and above* those permitted by the fee cap statute. The KKB attorneys would not be required to place the legal fees and legal costs in escrow, let alone provide restitution. They would not even be required to render a full accounting or to provide proof of the $600,000+ in expenses.

In stark contrast, the OCDC wrote in its Parnoff Petition:

> "**A reprimand for misappropriation is an abuse of discretion**, so far afield from disciplinary case law and from the ABA Standards for Imposing Lawyer Sanctions, as to present a question of great public importance and to **subvert the public's confidence in our disciplinary system**. . . . The discipline of a reprimand where misappropriation of client funds was found under the established facts is an abuse of discretion in that it is totally inconsistent with the current law and **undermines public confidence in the attorney discipline process**. … To allow for discipline so eschewed from

> the usual discipline in client fund misappropriation cases **undermines and tarnishes the consistency of the court and all those who seek to promote consistency in attorney discipline cases."**

The suspension or disbarment of Mr. Parnoff ultimately may be determined to be the appropriate sanction. However, the purpose of attorney discipline is "not to mete out punishment to an offender, but [so] that the administration of justice may be safeguarded and the courts and the public protected…" *Statewide Grievance Committee v. Botwick*, 226 Conn. 299, 307, 627 A.2d 901 (1993). Unfortunately, the OCDC is undermining and tarnishing the consistency of grievance proceedings and subverting the public's confidence in the attorney discipline system by championing standards it appears to be applying in an unequal and unfair manner. One attorney, Parnoff, should not bear the brunt of selective enforcement while the OCDC simultaneously is letting worse offenders off scot-free.

Seven attorneys were named in the grievances filed by the Applicants in February 2015. *See online link*: goo.gl/0tYKYn, pages E:126-E:167. Probable cause was found against two of the seven attorneys. One of the attorneys against whom no probable cause has yet been found is a member of a local grievance panel (William Bloss). Another attorney against whom no probable cause has yet been found is a former president of the Connecticut Bar Association (Keith Bradoc Gallant, from Day Pitney). Mr. Gallant was represented in the grievance proceedings by former Chief Disciplinary Counsel Mark Dubois. Mr. Dubois' immediate successor, Patricia King, left the OCDC in early 2015 to work for Mr. Dubois' firm.

The OCDC offered two KKB attorneys against whom probable cause was found what is the disciplinary equivalent of a "too big to fail" bailout, a golden misconduct parachute that is diametrically at odds with the standards that the OCDC is asking this Court to apply to Mr. Parnoff, including the OCDC's definition of "knowing" and misappropriation.

The OCDC is taking the position with Mr. Parnoff that it is irrelevant whether he knew about the consequences of his actions, whether he did this with or without integrity, or even whether he had any intention to deceive: "the only question is whether he knew that he was taking funds without approval **or agreement**." The ODC's October 19 allegation of misconduct of Koskoff and Nastri states (A8): "The KKB respondents failed to honor the terms of the March 21, 2003 fee **agreement** with the [D'Attilos]."

The OCDC offered a limited reprimand to the same KKB attorneys who deducted millions of dollars in legal fees from client funds to which the KKB attorneys were not entitled pursuant to §52-251c, along with KKB's unethical deduction of $600,000+ in legal costs from the Applicants' trust funds (about ***twice*** the amount Parnoff is accused of taking from his client), with no bills from vendors to prove accuracy or legitimacy.

This unequal application of rules places every client, attorney, and the system itself, at risk. The system's integrity will come under rightful criticism if Mr. Parnoff is suspended or disbarred while other attorneys who are engaged in similar or worse ethical misconduct are not. It will come under even harsher criticism if well-known and well connected attorneys are able to take advantage of vulnerable clients, charge $600,000+ in expenses without proof, and then walk away from all of this with a mild-mannered and partial reprimand, while keeping millions of dollars in fees and expenses to which they are not entitled.[2]

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[2] Unfortunately, there were other significant irregularities with the grievance process involving KKB and Day Pitney. The Applicants will be addressing these irregularities with other legal action. For example, the two local panels did not comply with the requirements of Practice Book §2-32(i)(2) mandating that local panels refer grievances alleging criminal conduct to the Statewide Grievance Committee even if no probable cause is found. By disobeying the requirements of the Practice Book, the local panels and the Statewide Grievance Committee through its internal rules have eliminated the only vestige of accountability in the current grievance procedures. This raises grave concerns regarding the grievance system itself.

The Applicants' grievance alleges that the KKB attorneys misrepresented the terms of the retainer agreement to the Applicants, and misinformed the Applicants that KKB was entitled to 28%, when it was only entitled to about 10% *by law*. Other events ensued, including KKB (and Day Pitney) advising the Applicants to move out of one probate court jurisdiction to another jurisdiction on the pretext that the first probate court was going to make the Applicants' lives unbearable. In reality, unbeknownst to the Applicants, the first probate court had appointed a Guardian Ad Litem who had requested a copy of the KKB retainer agreement. The attorneys literally had the Applicants move to another jurisdiction where, *inter alia*, it was less likely a GAL would be appointed. The attorneys were successful. The second probate court judge was never informed that the first probate court judge had appointed a GAL and that the GAL had requested a copy of the retainer agreement. The attorneys said nothing to either probate court judge or to their clients. The second judge approved the attorneys' settlement statement listing $7 million in legal fees and $632,000+ in legal costs. The KKB and Day Pitney attorneys who made the presentation to the judge were well known, with stellar reputations, above reproach or suspicion.[3]

That the OCDC is going after Mr. Parnoff's license to practice law while simultaneously negotiating a golden misconduct parachute for the well-connected KKB attorneys raises at least an appearance that attorneys with powerful connections may be able to get away with violating the law, misappropriating money from clients, and ignoring obligations to maintain verifiable records for all legal expenses charged to clients, while solo or small firm practitioners are held to much more stringent standards for much smaller amounts.

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[3] In December 2014, Applicants filed a civil action against the KKB and Day Pitney attorneys in New Haven Superior Court. *D'Attilo v. Koskoff, Koskoff & Bieder, P.C. et al*, NNH-CV14-6051836-S (December 2014). (goo.gl/w0nBWb). *See* Amended Complaint: http://goo.gl/8xrJr6.

Taking off their gloves for Parnoff only, the OCDC filed a criminal complaint with the state's attorney in August 2014, alleging that Mr. Parnoff had stolen Ms. Yuille's funds by failing to place the funds in escrow. The OCDC noted in its Parnoff brief that the trial court "found that no escrow order was necessary to trigger [Parnoff's] fiduciary obligation to hold the disputed funds in escrow", that Parnoff "had a duty to be transparent in the handling of Yuille's funds", "that Yuille was entitled to notice and an accounting before [Parnoff] could take her money", and "that [Parnoff's] testimony regarding his escrow account was incomprehensible." Pg. 6. On the issue of misappropriation, the OCDC contends (pg. 11):

> "**Misappropriation** … '**[includes] not only stealing but also unauthorized temporary use for [the] lawyer's own purpose, whether or not he derives any gain or benefit therefrom**.' Black's Law Dictionary (8th ed. 2004). It thus includes defalcation, defined in Black's as 'misappropriation of trust funds or money held in any fiduciary capacity, **and failure to properly account for such funds**,' and conversion, which is '[a]ny unauthorized act which deprives an owner of his property permanently or for an indefinite time.'"

Withdrawing $4.34 million in fees above the statutory limit and failing to properly account for more than $600,000 in legal costs fall squarely within that definition of misappropriation. A system that allows that kind of misappropriation to take place with no consequence for the attorneys involved is a system that risks losing all public confidence. "**If public confidence is destroyed, the bench and bar will be crippled institutions.**" *Matter of Wilson*, supra 81 N.J. 451, 461 (1979). Those are lofty concerns that require lofty action.

If the OCDC's criminal charges and its Parnoff brief reflect the OCDC's standards meriting the potential disbarment and imprisonment of Mr. Parnoff, it is inexplicable that it is not proceeding with allegations of misappropriation meriting disbarment against the KKB respondents. Applicants should be permitted to raise these issues in an amici brief to point out to this Court the OCDC's glaring and inexplicable double standard that might result in Mr.

Parnoff receiving punishment other attorneys are being exempted from. The OCDC seeks disbarment or suspension for Mr. Parnoff while seeking nothing but a barely perceptible tap on the shoulder for the KKB respondents, with no restitution, no escrow, no ethics class, not even an assurance from KKB that its other clients have not been harmed by other violations of §52-251c, or what is at absolute best, KKB's grossly inadequate accounting procedures.[4]

The United States Supreme Court has recognized that judicial decisions do not just belong to the parties but are "valuable to the legal community as a whole." *U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership*, 513 U.S. 18, 26 (1994). Applicants seek permission to file an amici brief because there is currently an outstanding settlement offer to the KKB respondents in their case. Not surprisingly, the offer has been accepted, it will be presented to the Statewide Committee on or about February 4, 2016 at a public hearing at a location to be announced. www.jud.ct.gov/SGC/. If the settlement is approved by the Statewide Grievance Committee, it will be a dark day for the oversight of attorney ethics in the State of Connecticut.

If Mr. Parnoff is then suspended or disbarred, it will be unjust for him, unfair to all Connecticut attorneys, and will leave the protection of the public and clients from unethical attorneys to a grievance process that does not apply its own standards equitably.[5]

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[4] Evidence was presented to the OCDC of major accounting irregularities regarding the $600,000+ of legal costs that had no original billing to confirm the accuracy, existence or legitimacy of the costs. For example, an expert hired by KKB testified under oath at the medical malpractice trial in May 2011 that his total fees would be $23,000-$25,000 *in total*. In May 2012, KKB deducted more than $82,000 from the Applicants' trust funds for this one expert. Even if there had been no other grievance issue presented, an attorney charging more than $82,000 for a $25,000 expense should not be tolerated by the local grievance panels, the OCDC charged with investigating attorney misconduct, or by this Court.

[5] The written decision of the local panel reviewing the KKB grievance is also seriously problematic. For example, the decision finds probable cause for violation of two Rules of Professional Conduct not connected to its findings of facts, RPC 1.15c and 1.6. A1-4.

While it is impossible to ascribe motivations, the end result is clear: the OCDC's application of its definition of "knowing" is so arbitrary and capricious that it is a loophole large enough to permit certain attorneys to overcharge or misappropriate millions of dollars without any consequence, and then, for bad measure, permit those same attorneys to deduct $600,000+ for legal costs without any documentation to prove the accuracy or even the existence of such costs.[6]

The OCDC wants this Court to impose sanctions against Mr. Parnoff at the same time it is actively going out of its way to afford what at least appears to be special treatment for Michael Koskoff and Kathleen Nastri (and the other five attorneys who have at least temporarily avoided having to answer for their conduct). As the OCDC wrote in the brief filed with this Court: "One of the ways a court may accomplish the goal of protecting the public and the judicial system is by imposing a sanction that deters other attorneys from engaging in similar misconduct." Sanctions are not meant to be punishments against individuals but serve a broader purpose to maintain the integrity of the system, so that "the administration of justice may be safeguarded and the courts and the public protected from the misconduct or unfitness of those who are licensed to perform the important functions of the legal profession." *In re Durant*, 67 A. 497, 500, 80 Conn. 140, (1907). That goal is not accomplished if only some attorneys face the consequence of their actions.

This Court has discretion to grant applications to appear as amicus curiae. *Thalheim v. Town of Greenwich*, 256 Conn. 628, 644, 775 A.2d 947 (2001). The situation summarized above threatens to bring Connecticut's system of attorney oversight into serious question.

---

[6] To make the OCDC's offer more inexplicable, arbitrary, and capricious, KKB avoided disciplinary charges in 2011 for trust accounting misconduct by representing that it had corrected problems found during an audit, and that no client funds had been at risk. A11-12.

Having radically different sanctions imposed against different attorneys in very similar cases is not self-governance but a form of ethical anarchy.

ACCORDINGLY, and for the foregoing reasons, the Applicants respectfully request permission to file a brief as amici curiae.

IN ADDITION, it is of overarching importance to protect clients and the courts from dishonest and unethical attorneys independent of any particular case. Therefore, the Applicants respectfully request that the Court use its inherent powers to order a review, an investigation, or the reform of an attorney disciplinary system that permits such unequal application of the Rules of Professional Conduct. *See, e.g. Statewide Grievance Comm. v. Rozbicki*, 211 Conn. 232, 239, 558 A.2d 986, 989 (1989) ("The regulation of attorney conduct is, therefore, within the court's inherent authority"). As the Preamble of the Rules of Professional Conduct states:

> "The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts. . . . The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. … Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves."

Respectfully submitted,

Howard Altschuler, Esq. (Juris 409226)
21 Perkins Rd.
Bethany CT 06524
1-234-567-9897
www.legal-malpractice.com
spiritofthelaw@gmail.com

CERTIFICATION

CERTIFICATION OF SERVICE: A copy of this motion has been served via electronic mail, facsimile, and/or first class U.S. mail on December 7, 2015, on the following counsel of record, and the Superior Court Judge, in accordance with the provisions of Practice Book § 62-7:

The Honorable Barbara N. Bellis
Judicial District of Bridgeport
1061 Main Street
Bridgeport CT 06604

Attorney Suzanne Sutton
Office of Chief Disciplinary Counsel
Juris No. 422382
100 Washington Street
Hartford, Connecticut 06106
phone (860) 706-5053
fax (860) 706-5063
Suzanne.sutton@jud.ct.gov

Attorney Paul Pollock
Bai, Pollock Blueweiss & Mulcahey
Two Corporate Drive
Shelton, CT 06484
Phone: (203) 925-8100
Fax: (203) 925-8108
ppollock@baipollock.com

CERTIFICATION OF COMPLIANCE

The undersigned hereby certifies that this motion is in compliance with the Connecticut Rules of Appellate Procedure §§ 62-7, 66-3, and 67-7, and that the font is Arial 12.

Howard Altschuler, Esq.

Howard Altschuler

From: Carrasquilla, Karyl <Karyl.Carrasquilla@jud.ct.gov>
Sent: Sunday, November 22, 2015 3:50 PM
To: Nuzzo, Anthony (Anuzzo@nuzzo-roberts.com)
Cc: Howard Altschuler (legalmalpractice@gmail.com)
Subject: D'Atillo hearings

Are on calendar for 1-7-16 at 9:30 a.m.

Reviewing committee is Tracie Molinaro, Sue Cousineau, Jonathan Shugarts.

Attorney Nuzzo, please advise if your clients will accept the 2-82 agreements that have been provided to you.

Thank you,
Karyl L. Carrasquilla

STATE OF CONNECTICUT
JUDICIAL BRANCH

COURT OPERATIONS DIVISION

OFFICE OF CHIEF DISCIPLINARY COUNSEL
Karyl L. Carrasquilla, *Chief Disciplinary Counsel*

100 Washington Street
Hartford, Connecticut 06106
(860) 706-5055 Fax (860) 706-5063
E-mail: Karyl.Carrasquilla@.jud.ct.gov

December 7, 2015

Attorney Howard Altschuler
21 Perkins Road
Bethany, CT 06524

RE: D'ATTILO V KOSKOFF, #15-0140

Dear Attorney Altschuler:

Enclosed please find a copy of the executed Proposed Disposition and Affidavit regarding the above captioned matter.

Very Truly Yours,

Karyl L. Carrasquilla
Chief Disciplinary Counsel

KLC/kw

RECEIVED
2015 DEC -7 AM 9:47
OFFICE OF
DISCIPLINARY COUNSEL

STATEWIDE GRIEVANCE COMMITTEE

DOMENIC D'ATTILO
CATHY D'ATILLO
Complainant

GRIEVANCE COMPLAINT #

v.

15-0140

MICHAEL P. KOSKOFF
Respondent

PROPOSED DISPOSITION PURSUANT TO PRACTICE BOOK § 2-82(b)

Pursuant to Practice Book § 2-82(b), and Practice Book § 2-82(a)(2), the undersigned Respondent and Disciplinary Counsel stipulate and agree as follows:

1. Michael P. Koskoff (hereinafter Respondent), juris number 032237, was admitted to the bar of the State of Connecticut on August 9, 1966 and has no disciplinary history.

2. The Respondent has registered with the Statewide Grievance Committee for 2015 and is currently in good standing.

3. This matter was instituted by grievance complaint dated February 17, 2015.

4. On June 29, 2015, the Fairfield Judicial District Grievance Panel found probable cause that the Respondent violated Rules 1.6 and 1.15(c) of the Rules of Professional Conduct.

5. The Respondent has tendered an affidavit pursuant to Practice Book § 2-82(d) attached hereto, and admits that he did not comply with Rule 1.15(e) of the Rules of Professional Conduct by not rendering a full accounting to the Complainants due to the fact that his law firm did not retain invoices for expenses that it paid during the course of the representation.

6. The Respondent and Disciplinary Counsel agree that the Respondent will be reprimanded pursuant to Practice Book §2-37(a).

7. The Respondent and Disciplinary Counsel agree that Disciplinary Counsel will recommend that the Statewide Grievance Committee impose the sanction set forth in this agreement. If this agreement is rejected by the Statewide Grievance

Committee, Disciplinary Counsel will pursue this matter at a contested hearing.

WHEREFORE, this matter is submitted to the Statewide Grievance Committee for its approval in accordance with Practice Book § 2-82(b).

Office of Disciplinary Counsel,

12/7/15
Date

By: Karyl E. Carrasquilla
Chief Disciplinary Counsel

12/2/15
Date

Michael P. Koskoff
Respondent

12/4/15
Date

Anthony Nuzzo, Jr.
Counsel for Respondent

STATEWIDE GRIEVANCE COMMITTEE

DOMENIC D'ATILLO
CATHY D'ATILLO
Complainant

v.

GRIEVANCE COMPLAINT #
15-0140

MICHAEL P. KOSKOFF
Respondent

AFFIDAVIT

STATE OF CONNECTICUT)
ss. Bridgeport
COUNTY OF Fairfield)

I am over the age of 18 and believe in the obligation of an oath. Pursuant to Practice Book § 2-82(d), I make the following affidavit:

1. The Proposed Disposition attached hereto and made a part hereof is voluntarily submitted.

2. I hereby consent to the form of disposition set out in the foregoing Proposed Disposition.

3. I am aware that I have a right to a full evidentiary hearing on this matter with the assistance of an attorney and I waive that right by entering into this agreement.

4. I have consulted with and been advised by my counsel, Anthony Nuzzo, Jr.

5. I have been neither subject to coercion nor duress and I am fully aware of the consequences of this Affidavit and Proposed Disposition.

6. I am aware of the current proceeding regarding my alleged violations of Rules 1.6 and 1.15(c) of the Rules of Professional Conduct.

7. I admit that I did not render a full accounting to the Complainants due to the fact that my law firm did not retain invoices for expenses that were paid during the

course of representation of the Complainants and that this conduct violated Rule 1.15(e) of the Rules of Professional Conduct. However, I maintain that all expenses charged to the clients were incurred and paid by the firm as part of the representation.

8. I agree to a reprimand pursuant to Practice Book § 2-37(a).

9. I understand that Disciplinary Counsel will recommend that this matter be resolved by the imposition of the sanction set forth in the Proposed Disposition. If this agreement is rejected by the Statewide Grievance Committee, the Disciplinary Counsel will pursue this matter at a contested hearing.

Michael P. Koskoff

Subscribed and sworn to before me

This 2 day of Dec., 2015

Linda Grossberg

LINDA GROSSBERG
NOTARY PUBLIC
State of Connecticut
My Commission Expires 8/31/2018

Notary Public/~~Commissioner of the Superior Court~~

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STATE OF CONNECTICUT
JUDICIAL BRANCH

COURT OPERATIONS DIVISION

OFFICE OF CHIEF DISCIPLINARY COUNSEL
Karyl L. Carrasquilla, *Chief Disciplinary Counsel*

100 Washington Street
Hartford, Connecticut 06106
(860) 706-5055 Fax (860) 706-5063
E-mail: Karyl.Carrasquilla@.jud.ct.gov

December 7, 2015

Attorney Howard Altschuler
21 Perkins Road
Bethany, CT 06524

RE: D'ATTILO V NASTRI, #15-0137

Dear Attorney Altschuler:

Enclosed please find a copy of the executed Proposed Disposition and Affidavit regarding the above captioned matter.

Very Truly Yours,

Karyl L. Carrasquilla
Chief Disciplinary Counsel

KLC/kw

STATEWIDE GRIEVANCE COMMITTEE

DOMENIC D'ATTILO
CATHY D'ATILLO
Complainant

GRIEVANCE COMPLAINT #

v.

15-0137

KATHLEEN L. NASTRI
Respondent

PROPOSED DISPOSITION PURSUANT TO PRACTICE BOOK § 2-82(b)

Pursuant to Practice Book § 2-82(b), and Practice Book § 2-82(a)(2), the undersigned Respondent and Disciplinary Counsel stipulate and agree as follows:

1. Kathleen L. Nastri (hereinafter Respondent), juris number 305440, was admitted to the bar of the State of Connecticut on November 11, 1986 and has no disciplinary history.

2. The Respondent has registered with the Statewide Grievance Committee for 2015 and is currently in good standing.

3. This matter was instituted by grievance complaint dated February 17, 2015.

4. On June 29, 2015, the Fairfield Judicial District Grievance Panel found probable cause that the Respondent violated Rules 1.6 and 1.15(c) of the Rules of Professional Conduct.

5. The Respondent has tendered an affidavit pursuant to Practice Book § 2-82(d) attached hereto, and admits that she did not comply with Rule 1.15(e) of the Rules of Professional Conduct by not rendering a full accounting to the Complainants due to the fact that her law firm did not retain invoices for expenses that it paid during the course of the representation.

6. The Respondent and Disciplinary Counsel agree that the Respondent will be reprimanded pursuant to Practice Book §2-37(a).

7. The Respondent and Disciplinary Counsel agree that Disciplinary Counsel will recommend that the Statewide Grievance Committee impose the sanction set forth in this agreement. If this agreement is rejected by the Statewide Grievance

Committee, Disciplinary Counsel will pursue this matter at a contested hearing.

WHEREFORE, this matter is submitted to the Statewide Grievance Committee for its approval in accordance with Practice Book § 2-82(b).

Office of Disciplinary Counsel,

12/7/15
Date

By: Karyl L. Carrasquilla
Chief Disciplinary Counsel

12/2/15
Date

Kathleen L. Nastri
Respondent

12/4/15
Date

Anthony Nuzzo, Jr.
Counsel for Respondent

STATEWIDE GRIEVANCE COMMITTEE

DOMENIC D'ATILLO
CATHY D'ATILLO
Complainant

v.

GRIEVANCE COMPLAINT #
15-0137

KATHLEEN L. NASTRI
Respondent

AFFIDAVIT

STATE OF CONNECTICUT)
ss. Cheshire
COUNTY OF New Haven)

I am over the age of 18 and believe in the obligation of an oath. Pursuant to Practice Book § 2-82(d), I make the following affidavit:

1. The Proposed Disposition attached hereto and made a part hereof is voluntarily submitted.

2. I hereby consent to the form of disposition set out in the foregoing Proposed Disposition.

3. I am aware that I have a right to a full evidentiary hearing on this matter with the assistance of an attorney and I waive that right by entering into this agreement.

4. I have consulted with and been advised by my counsel, Anthony Nuzzo, Jr.

5. I have been neither subject to coercion nor duress and I am fully aware of the consequences of this Affidavit and Proposed Disposition.

6. I am aware of the current proceeding regarding my alleged violations of Rules 1.6 and 1.15(c) of the Rules of Professional Conduct.

7. I admit that I did not render a full accounting to the Complainants due to the fact that my law firm did not retain invoices for expenses that were paid during the

course of representation of the Complainants and that this conduct violated Rule 1.15(e) of the Rules of Professional Conduct. However, I maintain that all expenses charged to the clients were incurred and paid by the firm as part of the representation.

8. I agree to a reprimand pursuant to Practice Book § 2-37(a).

9. I understand that Disciplinary Counsel will recommend that this matter be resolved by the imposition of the sanction set forth in the Proposed Disposition. If this agreement is rejected by the Statewide Grievance Committee, the Disciplinary Counsel will pursue this matter at a contested hearing.

Kathleen L. Nastri

Subscribed and sworn to before me

This 2nd day of December, 2015

Notary Public/~~Commissioner~~ of ~~the Superior Court~~

My Commission Expires May 31, 2020

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SUPREME COURT
STATE OF CONNECTICUT

OFFICE OF CHIEF DISCIPLINARY COUNSEL	)	SC 19535
V.	)	
LAURENCE PARNOFF	)	DECEMBER 18, 2015

MOTION FOR PERMISSION OF THE COURT TO FILE AN OBJECTION TO APPLICATION FOR LEAVE TO FILE BRIEF AMICI CURIAE

Koskoff, Koskoff & Bieder, PC, Kathleen L. Nastri, Esq., James D. Horwitz, Esq., Michael P. Koskoff, Esq., William M. Bloss, Esq. and Joel H. Lichtenstein, Esq. ("KK&B"), hereby move for permission to file an objection to the application for leave to file brief amici curiae filed on behalf of Cathy D'Attilo, Domenic D'Attilo and Daniel D'Attilo by their attorney, Howard Altschuler. The sole purpose of the application is to disparage KK&B, to publicize grievance materials related to KK&B's attorneys and to improperly influence Disciplinary Counsel and the Reviewing Committee in the pending grievances against Attorney Nastri and Attorney Koskoff under the guise of an application to file an amicus curiae brief. Accordingly, in order to refute the claims made in the application and to demonstrate that the Applicants' potential amicus submission would not in any way assist this Court, an objection should be permitted.

A. Brief History/Factual Grounds Relied Upon.

Attorney Altschuler on behalf of the D'Attilos commenced a civil action against KK&B as well as others via complaint dated December 30, 2014. The Superior Court (Frechette, J.) ordered the civil action stayed pending arbitration in accordance with a signed retainer agreement between KK&B and the D'Attilos. On February 17, 2015, Attorney Altschuler on

behalf of the D'Attilos filed grievance complaints against Attorney Koskoff, Attorney Nastri and others for the same conduct as set forth in the civil action. Upon learning that Disciplinary Counsel, Attorney Koskoff and Attorney Nastri agreed to proposed dispositions of the grievance complaints, Attorney Altschuler filed the instant application on behalf of the D'Attilos.

Attorney Altschuler argues that the public's confidence in the fairness of the Connecticut attorney-client grievance system is purportedly at stake because the Office of Chief Disciplinary Counsel prosecuted Attorney Parnoff for violations of Rules of Professional Conduct while it determined that the D'Attilos' grievance complaints against Attorney Koskoff and Attorney Nastri should be resolved without hearings. He attaches to his application Disciplinary Counsel's draft additional allegations of misconduct against Attorney Koskoff as well as other grievance material related to KK&B and its attorneys as well as other attorneys wholly unconnected to the Parnoff matter.

B. Legal Grounds Relied Upon.

Pursuant to Practice Book § 67-7, "[a] party in receipt of an application may, within ten days after the filing of the application, file an objection concisely stating the reasons therefor." The purpose of an amicus curiae brief is "to provide impartial information on matters of law about which there [is] doubt, especially in matters of public interest. . . ." State v. Ross, 272 Conn. 577, 612 (2005) (Citations and internal quotation marks omitted; emphasis in original). The Connecticut Supreme Court has granted permission to file amicus curiae briefs where "the [proffered] information is timely, useful or otherwise necessary to the administration of justice." Thalheim v. Town of Greenwich, 256 Conn. 628, 645 (2001) (Citation and internal quotation marks omitted).

Attorney Altschuler filed the instant application as a pretext to publicize grievance materials related to KK&B lawyers and others, including Disciplinary Counsel's draft additional allegations of misconduct against Attorney Koskoff, to disparage KK&B and its attorneys and to improperly influence both Disciplinary Counsel to withdraw her support of the resolution she has recommended and the Reviewing Committee to not accept the offered resolution. The unsubstantiated accusations regarding KK&B and its attorneys in the application are immaterial to this matter. The application does not set forth any useful information necessary to resolve a doubtful issue of law in the Parnoff matter, but rather merely serves to further Attorney Altschuler's own ulterior purpose of attempting to smear KK&B and its attorneys. A proposed objection is appended hereto.

C. Conclusion.

In light of the foregoing, Koskoff, Koskoff & Bieder, PC, Kathleen L. Nastri, Esq., James D. Horwitz, Esq., Michael P. Koskoff, Esq., William M. Bloss, Esq. and Joel H. Lichtenstein, Esq. respectfully request that they be permitted to file an objection to the application for leave to file brief amici curiae filed on behalf of Cathy D'Attilo, Domenic D'Attilo and Daniel D'Attilo.

THE MOVANTS,
Koskoff, Koskoff & Bieder, PC,
Kathleen L. Nastri, James D. Horwitz,
Michael P. Koskoff, William M. Bloss, and
Joel H. Lichtenstein

By _____

Anthony Nuzzo, Jr.
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CERTIFICATION PURSUANT TO P.B. § 62-7

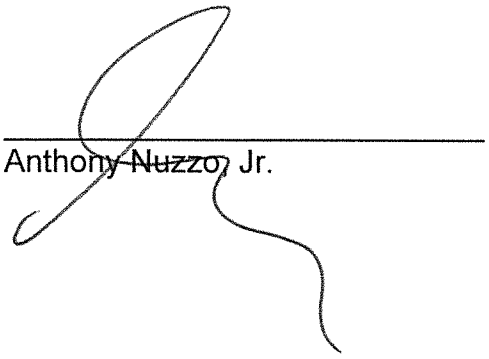
This is to certify that on December 18, 2015, a true copy of the foregoing Motion for Permission of the Court to File an Objection to Application for Leave to File Brief as Amici Curiae and attached Objection to Application of Cathy D'Attilo, Domenic D'Attilo and Daniel D'Attilo to file a Brief as Amici Curiae was served via electronic mail, facsimile and/or first class mail to all counsel of record below who remain parties to the certified questions of law, the undersigned's client, and counsel of record for the Amici Curiae applicants, Cathy D'Attilo, Domenic D'Attilo and their son Daniel Jacob D'Attilo, et al:

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Fax: (203) 925-8108
ppollock@baipollock.com



Anthony Nuzzo, Jr.

CERTIFICATION PURSUANT TO P.B. § 66-3

This is to certify that the foregoing Motion for Permission of the Court to File an Objection to Application for Leave to File Brief as Amici Curiae and attached Objection to Application of Cathy D'Attilo, Domenic D'Attilo and Daniel D'Attilo to file a Brief as Amici Curiae complies with all provisions of P.B. § 66-3.

Anthony Nuzzo, Jr.

\\fp01\nuzzo\WP\403049\259\AMICUS PARNOFF\Mot permission obj amicus curiae FINAL 12 18 15.doc

SUPREME COURT
STATE OF CONNECTICUT

OFFICE OF CHIEF DISCIPLINARY COUNSEL S.C. NO. 19535

vs.

LAURENCE PARNOFF DECEMBER 18, 2015

OBJECTION TO APPLICATION OF CATHY D'ATTILO, DOMENIC D'ATTILO AND DANIEL D'ATTILO TO FILE A BRIEF AS AMICI CURIAE

Pursuant to Practice Book § 67-7, Koskoff, Koskoff & Bieder, PC ("KK&B"), Kathleen L. Nastri, Esq., James D. Horwitz, Esq., Michael P. Koskoff, Esq., William M. Bloss, Esq. and Joel H. Lichtenstein, Esq. hereby object to Cathy D'Attilo's, Domenic D'Attilo's and Daniel D'Attilo's ("the Applicants") Application For Leave to File Brief as Amici Curiae.

The filing of this application is a misuse of the amicus process. The Applicants and their attorney are not seeking to file an amicus brief in order to assist this Court in deciding the issue of law before it – whether Attorney Laurence Parnoff knowingly misappropriated client funds warranting disbarment, a matter in which neither the Applicants nor the KK&B lawyers are involved. Rather, they are using the process to again publicize their sensational and false account of what ultimately amounts to a fee dispute with KK&B and to voice their displeasure with the grievance process. The Applicants and their attorney have inserted themselves into this matter, making scandalous accusations against, not only the KK&B lawyers, but also Disciplinary Counsel and attacking the grievance process as a whole in an obvious effort to improperly influence both Disciplinary Counsel to withdraw her support of the resolution she has recommended and the Reviewing Committee to not accept the offered resolution. Indeed, this is an abuse of process and as it relates to Applicants' counsel, a violation of the Rules of Professional Conduct (Rule 3.1) and a

blatant attempt to continue to vex, harass and disparage the KK&B lawyers who are among the most well respected attorneys in the Connecticut bar. The Applicants and their lawyer should not be permitted to misuse the amicus process in this way. Their application should be denied.

A. Specific Facts in Opposition

The Applicants and their attorney attempt to make the KK&B matter relevant to the case before this Court by claiming that Attorney Parnoff does not deserve to be disbarred, as compared to the KK&B lawyers by portraying the KK&B lawyers as criminals who stole money and then conspired to cover it up with counsel who handled the probate settlement issues. Now taking their unfounded accusations a step further, the Applicants and their attorney are alleging impropriety and special treatment in the grievance process simply because two different local panels have not believed their salacious claims, and Disciplinary Counsel, after her investigation and pursuant to her authority to do so, agreed to a resolution of the matter. To demonstrate that the proposed disposition is proper and has no kinship with Attorney Parnoff's case and because the Applicants and their attorney are seeking to not only disparage KK&B, but are also attempting to misuse the amicus process, a detailing of the underlying case is unfortunately necessary.

By way of background, KK&B represented the Applicants in connection with a complex medical malpractice action stemming from injuries suffered by Danny D'Attilo at birth, which resulted in cerebral palsy and significant, life-altering disabilities. The Applicants were represented by a team of KK&B lawyers, primarily Attorney Kathleen Nastri, who with her staff, championed Danny D'Attilo's cause for nine years with the hope of securing the financial resources necessary for Danny's care. Working closely with the

Applicants, the KK&B lawyers fought for Danny through two trials, the first resulting in a hung jury and the second resulting in a $58.6 million verdict, and later a complex, multi-session mediation, ultimately securing a $25 million settlement with the doctor's insurance company.

The Applicants first contacted KK&B around February 24, 2003 while Danny was still in the hospital. At that time, Attorney Nastri was not even employed by KK&B. By letter dated February 28, 2003, KK&B sent Mrs. D'Attilo blank medical authorizations and KK&B's standard fee agreement providing for a contingent fee of 33⅓%. At that time, General Statute § 52-251c placed limits on what a lawyer could charge a client as a contingency fee in personal injury cases and did not provide that the client could waive the statutory limits. However, the statute placed no restrictions on a client's ability to negotiate a different fee agreement. In addition, the case law at the time provided that a client could opt out of the fee limits in § 52-251c, without requiring any specific conditions, because the statute protected a "private right" that could be waived.[1] In re Estate of Salerno, 42 Conn. Supp. 526 (1993). Therefore, even prior to the subsequent change in the statute that specifically provided for a waiver, it was common practice for plaintiff's attorneys handling complex personal injury cases to negotiate fees outside the statutory fee limits due to the difficulty of the cases, the risks presented and the tremendous upfront expense involved.[2]

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[1] The court in Salerno noted from the legislative history from the passage of the original statute that it was conceded by proponents of the bill that the sliding scale could be waived.

[2] In 2005, two years after the D'Attilos signed their fee agreement, the fee statute was again modified to accommodate this practice and the court's holding in Salerno. (Public Act 05-275). The Legislative History reflects a recognition of the Salerno holding and that plaintiffs already could opt out of the statutory fee scale. The new statute specifically included a provision allowing the fee scale to be waived but not to exceed 33⅓%. The 2005 Public Act amending the statute specifically states that the statute was **"[e]ffective from passage [July 13, 2005]" and applicable to causes of action**

After receiving the first draft fee agreement, the Applicants sought the assistance of another attorney, Attorney Mark Greany, to modify the unsigned agreement. Although there is a factual dispute as to his level of involvement, it cannot be contested that Attorney Greany was acting on behalf of the D'Attilos with regard to their fee agreement with KK&B. Based on his affidavit, all that Attorney Greany will testify to is that he asked KK&B to reduce its fee and that he simply cannot recall anything else. (Greany Aff., Ex. A).

Attorney Koskoff will state under oath that he and Attorney Greany agreed that KK&B would limit its fee based on § 52-251c only if at the time that the funds were disbursed the statute had not been amended to permit a waiver of the statutory limits. If, however, § 52-251c was amended at the time the funds were disbursed, KK&B would be paid a fee of 28%. That is exactly what happened. When the funds were disbursed in May 2012, § 52-251c had been amended (in 2005) to include a waiver provision thus, entitling KK&B to 28% of the recovery – a fee that was agreed upon in 2003 and earned by KK&B during the nine years the matter was pending.

Furthermore, the Applicants not only understood the basis of the fee at the time the fee agreement was signed in 2003, but also prior to when the case settled in 2012.

Throughout the life of the case and in connection with potential settlements, the KK&B trial lawyers had multiple discussions with the Applicants about settlement numbers and what they would receive after costs and attorney's fees were paid. Prior to the jury awarding its verdict, the KK&B trial lawyers had never seen the 2003 fee agreement because they did not work on the case until after the fee agreement was signed. Thus, when the only offer to settle the case was the limits of the defendant's insurance policy ($2-

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***accruing on or after* said date**." Therefore, the 2005 statute and its new requirements did not apply to the underlying case because Danny's injury occurred in February 2003.

4 million) the lawyers' estimate of their clients' net recovery was based on their clients paying a 33⅓% fee, pursuant to KK&B's prior practice for medical malpractice cases.

In the fall of 2011 when it became apparent that the defendant physician's insurer was willing to make offers in excess of the policy limits, Attorney Nastri requested her staff to locate the 2003 fee agreement. To her surprise, she saw for the first time that it was not KK&B's customary agreement for 33⅓% but provided for a 28% fee if "that statute was no longer in effect" at the time that the funds were distributed. She immediately reviewed the history of the fee statute and saw that it was amended in 2005 to include a waiver provision. She then contacted her clients to explain that she was previously mistaken, that the fee was 33⅓% of the recovery.

On November 29, 2011, Attorney Nastri spoke to Mrs. D'Attilo regarding the status of negotiations and the fee agreement. This conversation was memorialized in an email from Attorney Nastri to her partners that same day:

> Just got off the phone with Kathy D. told her there had been no progress/news on the settlement negotiations; that the last we knew $18 million was the limit of the authority. I told her we were hopeful that there would be an increase in the offer...**I also told her that she was correct and that I was wrong about the fees when I assumed all along it was 1/3**. I told her they had negotiated a 28% fee, which would save Danny close to a million dollars if the case settled for $18 million. I also told her that she did not need to worry about the language in the fee agreement that it does not cover our work after the verdict; that we were continuing to work under the terms of the original fee agreement, and were not looking for any change/increase based on work since the verdict. **She seemed to understand both the settlement status and the fee agreement**.

(Email, Ex. B). Thereafter, there were additional discussions with the clients regarding the fee agreement because Attorney Nastri wanted to be sure that her clients understood the agreement that they had signed many years earlier. The Applicants were getting close to settlement and to make a decision, they would need to understand how much they would

receive after costs and attorneys' fees were deducted. The evidence once presented in the fee dispute case will clearly demonstrate that the clients understood the basis of the fee charged and agreed to pay KK&B 28% of the recovery after a hard fought nine year odyssey.

Notwithstanding the absence of any evidence demonstrating that the Applicants' case has merit, the Applicants' counsel continues to make frivolous claims in his various filings in court and before the Statewide Grievance Committee. He refuses to recognize that Judge Frechette has stayed the civil action and has ordered that the fee dispute aspect of the lawsuit be decided in arbitration. Attorney Altschuler also refuses to recognize that both local grievance panels who received a sampling of the evidence did not find any basis for the claim that the KK&B lawyers conspired with the attorneys later hired by the Applicants to handle the probate settlement issues (who were also grieved) to cover up the taking of inappropriate fees.

As to the litigation costs incurred by KK&B to prosecute the underlying medical malpractice case, there is no evidence that the costs were not incurred and paid by KK&B. KK&B has provided a full accounting with copies of all checks, to fully account for all funds expended on behalf of their clients. This information was provided to the grievance panel as well as counsel for the Applicants. The suggestion by the Applicants' counsel in this filing that KK&B overcharged for an expert is unsupported by the accounting. Yet in typical fashion, the Applicants' counsel provided no documentation at all related to this accusation.

Finally, the Applicants and their attorney make much of the fact that Disciplinary Counsel created a draft document with potential additional allegations of misconduct. Despite drafting this document, however, Disciplinary Counsel obviously determined that

the best resolution was an acknowledgement by the KK&B lawyers that they did not in fact retain invoices from third party vendors.

Despite the vitriol in the Applicants' and their attorney's filings, it is clear that the core issue between KK&B and the Applicants is really a fee dispute regarding what the parties agreed to in 2003 when the fee agreement was executed. Furthermore, all of the issues raised by the Applicants, including the meaning of the fee agreement, will be resolved in the pending civil suit.[3]

B. Legal Grounds in Opposition

The Applicants and their attorney are misusing the amicus process. The purpose of an amicus curiae brief is "to provide impartial information on matters of law about which there [is] doubt, especially in matters of public interest. . . . The orthodox view of amicus curiae was, and is, that of an impartial friend of the court - not an adversary party in interest in the litigation. . . . The position of classical amicus in litigation was not to provide a highly partisan account of the facts, but rather to aid the court in resolving doubtful issues of law." State v. Ross, 272 Conn. 577, 612 (2005) (Citations and internal quotation marks omitted; emphasis in original). The Connecticut Supreme Court has granted permission to file amicus curiae briefs where "the [proffered] information is timely, useful or otherwise necessary to the administration of justice." Thalheim v. Town of Greenwich, 256 Conn. 628, 645 (2001) (Citation and internal quotation marks omitted).

[3] The civil case is stayed pending arbitration. The defendants have attempted to move forward with the arbitration, but the Applicants and their attorney refused to even agree on an arbitrator. KK&B and its attorneys remain ready and willing to move forward with the arbitration. See, Cathy D'Attilo, et al. v. Koskoff, Koskoff & Bieder, P.C., et al., Docket No. CV14-6051836-S.

The Applicants and their attorney are not seeking to file an amicus brief in order to assist this Court in deciding the issue of law before it – whether Attorney Parnoff knowingly misappropriated client funds warranting disbarment. In fact, the civil lawsuit and pending grievance proceedings raised by the Applicants are solely between the Applicants and KK&B and their lawyers (and the attorneys retained to handle the probate issues) and are wholly unrelated to the matter before this Court involving Attorney Parnoff. It is evident that they are using the process to continue to publicize their sensational and false account of what amounts to a fee dispute with KK&B and their attorneys and their displeasure with the grievance process. The filing of this application is in direct response to first the local grievance panels finding no probable cause as to most of the claims, and after her investigation, Disciplinary Counsel offering to resolve the claims pursuant to Practice Book § 2-82.

In the ordinary course of events, the proposed disposition would proceed with the Reviewing Committee deciding whether to accept or reject it. However, the Applicants and their counsel, being unhappy with the proposed disposition, decided to insert themselves into this case with the specific purpose of publicizing a confidential negotiation so to undermine the integrity of the process and the good faith effort of Attorneys Koskoff and Nastri and Disciplinary Counsel to resolve this matter. This obvious attempt to harm the KK&B attorneys and influence both Disciplinary Counsel to withdraw her support of the resolution she recommended and the Reviewing Committee to not accept the offered resolution should not be permitted. No doubt any amicus brief by the Applicants would be a continuation of their ad hominem attack, which would serve no purpose in assisting the

court in this matter and would only serve to further publicize the Applicants' and their attorney' false allegations.

C. Conclusion

In light of the foregoing, Koskoff, Koskoff & Bieder, PC ("KK&B"), Kathleen L. Nastri, Esq., James D. Horwitz, Esq., Michael P. Koskoff, Esq., William M. Bloss, Esq. and Joel H. Lichtenstein, Esq. respectfully request that this Court deny the application to submit a brief as amicus curiae in this case.

Koskoff, Koskoff & Bieder, PC,
Kathleen L. Nastri, James D. Horwitz,
Michael P. Koskoff, William M. Bloss, and
Joel H. Lichtenstein

By _____
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STATE OF CONNECTICUT

Michael P. Bowler
Statewide Bar Counsel

Frances Mickelson-Dera
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STATEWIDE GRIEVANCE COMMITTEE

www.jud.ct.gov/sgc/
Second Floor - Suite Two
287 Main Street, East Hartford, Connecticut 06118-1885

01/06/2016

OFFICE OF CHIEF DISCIPLINARY C
100 WASHINGTON STREET
HARTFORD CT 06106

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KOSKOFF, KOSKOFF & BIEDER
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5TH FLOOR
BRIDGEPORT CT 06604

RE: GRIEVANCE COMPLAINT #15-0140 , DATTILO vs. KOSKOFF
HEARING NOTICE

Dear Respondent and Disciplinary Counsel:

On Thursday February 04, 2016 at 09:30 a.m. there will be a hearing concerning the above referenced complaint. The hearing will be held at:

SUPERIOR COURT
80 WASHINGTON ST
HARTFORD
COURTOOM B

The hearing shall be public and on the record.

You are expected to appear at the hearing at the time and date set forth above. A motion for an alternative date or time will only be considered if filed in compliance with the Statewide Grievance Committee rule of procedure set forth in the Grievance Hearing enclosure.

In the event that a party does not appear, the hearing will be held and a determination will be made on the evidence and argument presented at the hearing and the record of the grievance panel.

Information pertaining to the hearing process is enclosed herewith.

Sincerely,

Michael P. Bowler

Encl.
cc: JD Administrative Judge or Chief Clerk
Official Reporter
Attorneys Tracie Molinaro, Sue Cousineau
Jonathan Shugarts
NUZZO & ROBERTS LLC
Cathy M. Dattilo Et

GRIEVANCE HEARING

The hearing will be conducted by a subcommittee, known as a reviewing committee, of the Statewide Grievance Committee. The hearing is public and on the record.

The hearing is limited to the issues related to the probable cause finding filed by the grievance panel or the reviewing committee. Note that a reviewing committee will review the record of the complaint before the hearing and has the right to issue additional findings of probable cause based upon any allegation in the complaint. Notice of any additional finding of probable cause will be sent to Disciplinary Counsel, the Complainant and to the Respondent. The text of the Rule or Rules of Professional Conduct or sections of the Connecticut Practice Book cited as a basis for the finding of probable cause by the grievance panel or reviewing committee is available for review at any Connecticut law library or on the Judicial Branch website at www.jud.ct.gov.

Complainants and Respondents have the right to have counsel present at the hearing. Disciplinary Counsel will be responsible for the presentation of witnesses and evidence in support of the probable cause findings at the hearing. Therefore, Complainants should consult with Disciplinary Counsel prior to the hearing regarding witnesses and evidence since they may be called as a witness. The telephone number of the Chief Disciplinary Counsel's Office is (860) 706-5055; the Office's email address is Disciplinary.Counsel@jud.ct.gov. Respondents have the right to be heard in their own defense and by witnesses and counsel. Respondents who require the presence of a witness are responsible for ensuring the presence of the witness by subpoena or otherwise. Disciplinary Counsel and the Respondent shall be entitled to examine and cross-examine witnesses. Hearings are generally completed the day that they are begun. Therefore, all witnesses and evidence should be brought to the hearing on the day it is scheduled. The hearing is generally the only opportunity to present witnesses and evidence. At the conclusion of the evidentiary/fact-finding phase of the hearing, Disciplinary Counsel, the Complainant and the Respondent shall have the opportunity to make a closing statement.

Rule 7 of the Statewide Grievance Committee Rules of Procedure governs reviewing committee hearings. A copy of the Rule is enclosed. Please be sure to read the rule as it contains important information about briefs, evidentiary submissions, etc.

Generally, all hearings are scheduled for 9:30 a.m. Disciplinary Counsel, Complainants, Respondents, counsel (if any) and witnesses (if any) are expected to report at their scheduled time. A decision will be made by the reviewing committee determining in which order matters will be heard.

The reviewing committee will render and file with the Statewide Grievance Committee a written final decision. A copy of the final decision will be forwarded to the participants. The Respondent may, within thirty (30) days of the issuance of the decision, submit to the Statewide Grievance Committee a request for review of the decision. A request for review must comply with the requirements of Practice Book §2-35. The Statewide Grievance Committee will then render a decision. Pursuant to Practice Book §2-38, a request for review is a prerequisite to an appeal of a reviewing committee disciplinary order issued pursuant to either Practice Book §2-37 or 2-47(d).

The public record of the complaint is available for inspection, with reasonable notice, at the office of the Statewide Bar Counsel.

Complainants requiring the services of an interpreter should contact the office of the Disciplinary Counsel. Respondents requiring the services of an interpreter should contact the office of the Statewide Bar Counsel in writing within seven (7) days of the date of the enclosed notice and indicate the language to be interpreted. If because of a disability a reasonable accommodation is required, please let us know in advance by telephoning (860) 568-5157 or by emailing Statewide.Grievance@jud.ct.gov so that we may discuss your individual needs. Hearing and speech-impaired parties with a TDD can contact the office of the Statewide Bar Counsel through the Converse Communication Center (CCC) which provides relay message services between TDD and non-TDD users: (800) 842-9710.

INCLEMENT WEATHER

In the event of inclement weather, you may telephone the office of the Statewide Bar Counsel (860-568-5157) to determine whether the hearing will go forward as scheduled. You may also find information about inclement weather at www.jud.ct.gov.

Revised 4/10
(Respondent & Disciplinary Counsel - Post-Jan. 2004 complaints)

STATE OF CONNECTICUT

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STATEWIDE GRIEVANCE COMMITTEE

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Second Floor - Suite Two
287 Main Street, East Hartford, Connecticut 06118-1885

01/06/2016

OFFICE OF CHIEF DISCIPLINARY C
100 WASHINGTON STREET
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KATHLEEN LENEHAN NASTRI
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350 FAIRFIELD AVE.
5TH FLOOR
BRIDGEPORT CT 06604

RE: GRIEVANCE COMPLAINT #15-0137 , DATTILO vs. NASTRI
HEARING NOTICE

Dear Respondent and Disciplinary Counsel:

On Thursday February 04, 2016 at 09:30 a.m. there will be a hearing concerning the above referenced complaint. The hearing will be held at:

SUPERIOR COURT
80 WASHINGTON ST
HARTFORD
COURTOOM B

The hearing shall be public and on the record.

You are expected to appear at the hearing at the time and date set forth above. A motion for an alternative date or time will only be considered if filed in compliance with the Statewide Grievance Committee rule of procedure set forth in the Grievance Hearing enclosure.

In the event that a party does not appear, the hearing will be held and a determination will be made on the evidence and argument presented at the hearing and the record of the grievance panel.

Information pertaining to the hearing process is enclosed herewith.

Sincerely,

Michael P. Bowler

Encl.
cc: JD Administrative Judge or Chief Clerk
Official Reporter
Attorneys Tracie Molinaro, Sue Cousineau
Jonathan Shugarts
NUZZO & ROBERTS LLC
Cathy M. Dattilo Et

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ADMITTED:

STATE COURTS:
CT, NJ, NY, PA

FEDERAL APPELLATE COURTS:
UNITED STATES SUPREME COURT
2ND CIR. CT. OF APPEALS
3RD CIR. CT. OF APPEALS
9TH CIR. CT. OF APPEALS

FEDERAL TRIAL COURTS:
SOUTHERN DISTRICT OF NEW YORK
EASTERN DISTRICT OF NEW YORK
DISTRICT OF CONNECTICUT
DISTRICT OF NEW JERSEY

FEDERAL BANKRUPTCY COURTS:
DISTRICT OF CONNECTICUT
SOUTHERN DISTRICT OF NEW YORK

New York Office:
281 Garth Rd.
Building C- 3D
Scarsdale, NY 10583
Please Reply to Bethany Office

January 5, 2016

Frank J. Riccio, Esq. Chair
Michael P. Bowler, Esq. Statewide Bar Counsel
287 Main Street
Second Floor, Suite Two
East Hartford, CT
06118-1885

VIA FIRST CLASS MAIL TO THE ABOVE AND EMAIL TO:
Michael.Bowler@jud.ct.gov
frankriccio@ricciolaw.com
cc: Anthony Nuzzo, Esq. anuzzo@nuzzo-roberts.com, Mark Dubois, Esq.
MDubois@geraghtybonnano.com

RE: Grievances #15-0137, #15-040

Dear Attorney Riccio and Attorney Bowler,

With this letter, I am formally requesting a stay of the SCG hearing/meeting that will consider the proposed settlement of the above-captioned grievances.

As you know, I have filed a Writ of Mandamus related to the above grievances and the five other interrelated grievances. The Writ seeks a court order to have the named defendants follow the procedures set forth in Practice Book 2-32 and 2-34.

While I have not received any official notification, Attorney Carrasquilla previously told me that she expected the Statewide Grievance Committee would review the Nastri and Koskoff proposed grievance settlement on February 4, 2016. Please let me know if a SGC meeting has been scheduled.

Because all seven grievances are interrelated, and the outcome of the Writ will directly impact all seven grievances. I respectfully request that a decision on the proposed grievance settlement be stayed pending the outcome of the writ-related legal proceedings. I set a return date of January 12 for the Writ, so the matter should proceed expeditiously.

Respectfully submitted,

ON BEHALF OF THE COMPLAINANTS,
LAW OFFICES OF HOWARD ALTSCHULER
Howard Altschuler, Esq.
21 Perkins Rd.
Bethany CT 06524
1-234-567-9897
Email: spiritofthelaw@gmail.com

STATE OF CONNECTICUT
JUDICIAL BRANCH

STATEWIDE GRIEVANCE COMMITTEE
Cathy A. Dowd, *Assistant Bar Counsel*

287 Main Street
Second Floor – Suite Two
East Hartford, CT 06118-1885
(860) 568-5157 Fax (860) 568-4953
Judicial Branch Website: www.jud.ct.gov

January 11, 2016

Attorney Howard Altschuler
21 Perkins Road
Bethany, CT 06524

RE: Grievance Complaint #15-1037, D'Attilo v. Nastri
Grievance Complaint #15-0140, D'Attilo v. Koskoff

Dear Attorney Altschuler:

Your January 5, 2016 request for a stay/continuance of the February 4, 2016 hearings in connection with the above referenced matters has been **denied due to a lack of standing**. Pursuant to Rule 7(B) of the Statewide Grievance Committee's Rules of Procedure, continuances of hearings may be granted only to Disciplinary Counsel or the Respondent. As counsel to the Complainants, you do not have any standing to file a motion for stay. Accordingly, the hearings will go forward as scheduled in Hartford on February 4, 2016.

Sincerely,

Cathy A. Dowd
(Extension 3018)

CAD
cc: Attorney Karyl Cassasquilla
Attorney Anthony Nuzzo, Jr.
Attorney Sue A. Cousnineau
Attorney Tracie L. Molinaro
Mr. Jonathan Shugarts

Howard Altschuler

From: Carrasquilla, Karyl <Karyl.Carrasquilla@jud.ct.gov>
Sent: Tuesday, January 12, 2016 11:13 AM
To: Howard Altschuler
Subject: D'Attilo v. Koskoff- 15-0140

Attorney Altschuler,
Counsel for Attorney Koskoff has filed a continuance of the 2-4-16 hearing on this matter. I consented. We will receive a decision from the SGC.
At this time, the Nastri matter remains on the calendar for a hearing on 2-4-16 wherein the proposed 2-82 will be offered to the SGC.
Thank you,
Karyl Carrasquilla

Howard Altschuler

From: Howard Altschuler <legalmalpractice@gmail.com>
Sent: Tuesday, January 12, 2016 11:33 AM
To: 'Carrasquilla, Karyl'
Subject: RE: D'Attilo v. Koskoff- 15-0140

Hi Attorney Carrasquilla,

It would be a hardship for my clients to have to appear at two separate hearings for the same issues, so I would ask that both matters be adjourned to be heard at the same time. Please let me know if you will consent to an adjournment of the Nastri matter as well, and if you will request that from the Committee since it is not clear to me whether my clients have the right to request any adjournment directly from the committee.

Sincerely,
Howard Altschuler

From: Carrasquilla, Karyl [mailto:Karyl.Carrasquilla@jud.ct.gov]
Sent: Tuesday, January 12, 2016 11:13 AM
To: Howard Altschuler <legalmalpractice@gmail.com>
Subject: D'Attilo v. Koskoff- 15-0140

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Thank you,
Karyl Carrasquilla

Howard Altschuler

From: Carrasquilla, Karyl <Karyl.Carrasquilla@jud.ct.gov>
Sent: Tuesday, January 12, 2016 11:56 AM
To: Howard Altschuler
Subject: RE: D'Attilo v. Koskoff- 15-0140

Attorney Altschuler,
Please provide details as to the "hardship" that would be caused to the D'Atillos if the hearings are scheduled at separate times. Due to the fact that probable cause was found in July 2015, I assume that the SGC would like to move the matters along. If I am to file a request for continuance, I must have a sound basis.
Thank you,
Karyl Carrasquilla

From: Howard Altschuler [mailto:legalmalpractice@gmail.com]
Sent: Tuesday, January 12, 2016 11:33 AM
To: Carrasquilla, Karyl
Subject: RE: D'Attilo v. Koskoff- 15-0140

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From: Carrasquilla, Karyl [mailto:Karyl.Carrasquilla@jud.ct.gov]
Sent: Tuesday, January 12, 2016 11:13 AM
To: Howard Altschuler <legalmalpractice@gmail.com>
Subject: D'Attilo v. Koskoff- 15-0140

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At this time, the Nastri matter remains on the calendar for a hearing on 2-4-16 wherein the proposed 2-82 will be offered to the SGC.
Thank you,
Karyl Carrasquilla

Law Offices of Howard Altschuler

21 Perkins Rd.
Bethany, CT 06524
Voice: (234) 567-9897
Fax: (815) 846-1664
Website: www.legal-malpractice.com
Email: legalmalpractice@gmail.com

ADMITTED:

STATE COURTS:
CT, NJ, NY, PA

FEDERAL APPELLATE COURTS:
UNITED STATES SUPREME COURT
2ND CIR. CT. OF APPEALS
3RD CIR. CT. OF APPEALS
9TH CIR. CT. OF APPEALS

FEDERAL TRIAL COURTS:
SOUTHERN DISTRICT OF NEW YORK
EASTERN DISTRICT OF NEW YORK
DISTRICT OF CONNECTICUT
DISTRICT OF NEW JERSEY

FEDERAL BANKRUPTCY COURTS:
DISTRICT OF CONNECTICUT
SOUTHERN DISTRICT OF NEW YORK

New York Office:
281 Garth Rd.
Building C- 3D
Scarsdale, NY 10583
Please Reply to Bethany Office

January 12, 2016

Karyl L. Carrasquilla, Esq.
Chief Disciplinary Counsel
Office of Chief Disciplinary Counsel
100 Washington Street, Hartford, CT 06106
Via Email Karyl.Carrasquilla@jud.ct.gov

Dear Attorney Carrasquilla,

I was not given any prior notice that a continuation was requested, and no opportunity to respond. Please provide me a copy of the continuation notice and any related papers.

Having this split into two hearings ends up being a significant penalty and hardship to the D'Attilos. Cathy and Domenic will have to make arrangements for their son Danny twice instead of once. The location of the 9:30 a.m. hearing is more than 70 miles from the D'Attilos' house. Depending on traffic, this will take anywhere from 75 minutes to nearly two hours, one way. This equals 2.5 to 4 hours' total round trip driving time per hearing, for a total driving time for two hearings of about 5 to 8 hours, and 280 miles.

At the same time, the court is about 32 miles from my location and can take anywhere from 40 minutes to more than an hour to get there during rush hour. The D'Attilos will incur twice the legal fees.

Perhaps more importantly, as you know, the D'Attilos have been through an incredibly difficult time and an emotionally traumatic experience as a result of what these attorneys did and failed to do. To have to appear twice before the Committee, to hear whatever is presented by your Office twice, to have to plead to the committee members twice not to allow the injustice of this offer to be approved, victimizes the D'Attilos twice as well. Of course, it should go without saying that would be a hardship for anyone, let alone a family with a disabled child. There are other reasons, but I hope that will suffice.

If there had been any substantive reason to split the hearings into two, you or the respondents would have requested that from the very beginning. There was no such request but it was the intention from the beginning to have this heard at the same time.

As you know, my clients strongly oppose this offer. In their view, there should have been a full investigation and hearing on the merits of all the issues that they raised, not two hearings to decide whether Nastri and Koskoff can walk away from all of this without being held responsible in any way for their misappropriation of millions of dollars in legal fees, not being held responsible for a continuing pattern of accounting malfeasance as evidenced by the 2011 stipulation between KKB and your office, and not being held responsible for misrepresentations of fact KKB presented to the local panels and your office.

It is not fair to the D'Attilos (or any complainant) to be penalized in this way and to be required to make twice the effort, incur twice the cost, and go through twice the emotional trauma. As victims, they deserve more consideration than this and it would have been preferable if you had notified me of the adjournment request upon its receipt, rather than after the fact.

Please let me know as soon as possible whether you are going to request that both matters be heard at the same date and at the same location.

Sincerely yours,

Howard Altschuler

STATE OF CONNECTICUT
JUDICIAL BRANCH

STATEWIDE GRIEVANCE COMMITTEE
Cathy A. Dowd, *Assistant Bar Counsel*

287 Main Street
Second Floor – Suite Two
East Hartford, CT 06118-1885
(860) 568-5157 Fax (860) 568-4953
Judicial Branch Website: www.jud.ct.gov

January 13, 2016

Attorney Anthony Nuzzo, Jr.
Nuzzo & Roberts, LLC
One Town Center
P.O. Box 747
Cheshire, CT 06410

RE: Grievance Complaint #15-0140, D'Attilo v. Koskoff

Dear Attorney Nuzzo:

Your January 11, 2016 Motion for Continuance of the February 4, 2016 hearing in connection with the above referenced matter has been **granted.** Please keep me informed of Attorney Koskoff's progress and when he will be available to appear at a hearing.

Very truly yours,

Cathy A. Dowd
(Extension 3018)

CAD
Cc: Attorney Howard Altschuler
Attorney Karyl Carrasquilla
Attorney Michael Koskoff
Attorney Tracie Molinaro
Attorney Sue Cousineau
Mr. Jonathan Shugarts

STATE OF CONNECTICUT
JUDICIAL BRANCH

STATEWIDE GRIEVANCE COMMITTEE
Cathy A. Dowd, *Assistant Bar Counsel*

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East Hartford, CT 06118-1885
(860) 568-5157 Fax (860) 568-4953
Judicial Branch Website: www.jud.ct.gov

January 14, 2016

Attorney Howard Altschuler
21 Perkins Road
Bethany, CT 06524

RE: Grievance Complaint #15-1037, D'Attilo v. Nastri
Grievance Complaint #15-0140, D'Attilo v. Koskoff

Dear Attorney Altschuler:

Enclosed please find a courtesy copy of the Respondents' objection to the request for a stay that you filed in connection with the above referenced matters. The objection was not considered by the reviewing committee in connection with your request for a stay because it was filed with this office on January 13, 2016, after the reviewing committee denied the request due to a lack of standing.

Sincerely,

Cathy A. Dowd
(Extension 3018)

Encl.

CAD
cc: Attorney Karyl Cassasquilla (without enclosure)
Attorney Anthony Nuzzo, Jr. (without enclosure)
Attorney Sue A. Cousineau (with enclosure)
Attorney Tracie L. Molinaro (with enclosure)
Mr. Jonathan Shugarts (with enclosure)

STATEWIDE GRIEVANCE COMMITTEE

CATHY M. D'ATTILO
DOMENIC D'ATTILO
Complainants

GRIEVANCE NO. 15-0140
GRIEVANCE NO. 15-0137

vs.

MICHAEL P. KOSKOFF
KATHLEEN L. NASTRI
Respondents

JANUARY 12, 2016

OBJECTION TO THE COMPLAINANTS' REQUEST TO STAY THE FEBRUARY 4, 2016 HEARING

The Respondents, Attorney Michael Koskoff and Attorney Kathleen Nastri hereby object to the Complainants' request to stay the hearing scheduled on February 4, 2016 regarding a disposition of the grievance complaints filed against them for the following reasons:

1. The Respondents and the Chief Disciplinary Counsel have agreed to a disposition of the grievance complaint filed against each of them.

2. This agreement is subject to approval by the reviewing committee pursuant to Connecticut Practice Book § 2-82(b).

3. A hearing date is scheduled for February 4, 2016.

4. When scheduled, Attorneys Koskoff and Nastri were prepared to proceed on February 4, 2016.

5. [redacted]

6. [redacted]

7. Attorney Nastri is prepared to go forward with her hearing on February 4, 2016.

8. Although the complainants have requested a stay of the February 4, 2016 hearing in the form of a letter dated January 5, 2016, it is a motion, nevertheless, which is procedurally impermissible.

9. Such motion is procedurally improper pursuant to Statewide Grievance Committee Rule 7C, which provides that motions can only be filed by Disciplinary Counsel, the Respondent or the Respondent's counsel.

10. Additionally, the Complainants claims as set forth in their Writ of Mandamus are meritless, designed to continue to publish their false and misleading allegations against the Respondents and to interfere with the grievance process and the disposition of this matter.

Accordingly, for the foregoing reasons, the Respondents respectfully request the Statewide Bar Counsel to deny the Complainant's request to stay and to proceed with Attorney Nastri's hearing as scheduled on February 4, 2016.

THE RESPONDENTS
MICHAEL P. KOSKOFF
KATHLEEN L. NASTRI

By _____
Anthony Nuzzo, Jr., Esq.
NUZZO & ROBERTS, L.L.C.
One Town Center
P.O. Box 747
Cheshire, CT 06410
Phone: (203) 250-2000
Facsimile: (203) 250-3131
Juris No. 019193
anuzzo@nuzzo-roberts.com

Howard Altschuler

From: Howard Altschuler <legalmalpractice@gmail.com>
Sent: Friday, January 15, 2016 1:06 PM
To: 'Carrasquilla, Karyl'
Subject: RE: D'Attilo v. Koskoff- 15-0140

Hi Attorney Carrasquilla,

What is the status of my request for an adjournment of the February 4 grievance schedule in light of the continuance for Michael Koskoff? Thank you.

Sincerely,
Howard Altschuler

From: Carrasquilla, Karyl [mailto:Karyl.Carrasquilla@jud.ct.gov]
Sent: Tuesday, January 12, 2016 11:56 AM
To: Howard Altschuler <legalmalpractice@gmail.com>
Subject: RE: D'Attilo v. Koskoff- 15-0140

Attorney Altschuler,
Please provide details as to the "hardship" that would be caused to the D'Atillos if the hearings are scheduled at separate times. Due to the fact that probable cause was found in July 2015, I assume that the SGC would like to move the matters along. If I am to file a request for continuance, I must have a sound basis.
Thank you,
Karyl Carrasquilla

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Sent: Tuesday, January 12, 2016 11:33 AM
To: Carrasquilla, Karyl
Subject: RE: D'Attilo v. Koskoff- 15-0140

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Sent: Tuesday, January 12, 2016 11:13 AM
To: Howard Altschuler <legalmalpractice@gmail.com>
Subject: D'Attilo v. Koskoff- 15-0140

Attorney Altschuler,

MOTION FOR CONTINUANCE
JD-GC-17 Rev. 10-05
Statewide Grievance Committee Rule 7B

[A389]

STATE OF CONNECTICUT
STATEWIDE GRIEVANCE COMMITTEE
JUDICIAL BRANCH
www.jud.ct.gov

INSTRUCTIONS

1. *Type or print.*
2. *File original with the Statewide Grievance Committee at the below address no later than seven calendar days prior to the date of the hearing.*
3. *Keep a copy for your records.*

TO: Statewide Grievance Committee, 287 Main St., Second Floor, East Hartford, CT 06118-1885

COMPLAINT NAME		GRIEVANCE COMPLAINT NUMBER
D'Attilo v Nastri		**15-1037**
LOCATION OF HEARING	DATE OF HEARING	DATE OF MOTION
80 Washington Street, Hartford, CT	**02/04/2016**	**01/19/2016**

PERSON MAKING MOTION IS:
☒ DISCIPLINARY COUNSEL ☐ RESPONDENT ☐ COUNSEL FOR RESPONDENT ☐ OTHER: _____

I request a continuance in the above referenced matter for the reason set out below.

REASON FOR CONTINUANCE MOTION

If the basis for the motion is a court conflict, you must first seek to resolve the conflict with the court. In such case, include the case name, docket number, name of presiding judge or caseflow officer with whom you spoke, when the conversation took place, when you became aware of the conflict and, for counsel for a respondent, whether the conflict existed prior to being retained by your client. If the basis of the motion is not a court conflict, state with specificity what it is, when it arose, whether it existed before you appeared in this case, and what you did to attempt to resolve the conflict before filing this motion.

Disciplinary Counsel requests a continuance due to having been informed that having to attend two separate hearings, on two separate dates is a hardship to the complainants. The hearing is scheduled to be held approximately 70 miles from their home and this is a hardship for them. Another hardship is that they will incur twice the attorney fees, as they are represented by counsel. Lastly, they claim a hardship in the fact that they will have to experience this emotionally traumatic experience twice if the Nastri and Koskoff hearings are scheduled on different dates. Disciplinary Counsel intends on calling the complainants as witnesses in both matters.

POSITION OF ALL PARTIES ON THIS MOTION - CONSENT/OBJECT

It shall be the duty of the moving party to inform all parties or their counsel of the motion and to fully disclose their position in support of or in opposition to the motion.

Disciplinary Counsel has not received a response from Respondent's counsel regarding whether or not there is consent to this request for continuance.

I hereby agree to be responsible for notifying my client and all counsel of record and pro se parties whether the continuance is granted or denied.

SIGNED *(Person making motion)*	DATE SIGNED
X [signature]	**01/19/2016**

CERTIFICATION

I hereby certify that a copy of the above was mailed/delivered to all counsel and pro se parties of record on: **01/19/2016** (DATE MAILED/DELIVERED)

SIGNED *(Person making motion)*	TYPE OR PRINT NAME OF PERSON SIGNING	TELEPHONE NO. OF PERSON SIGNING
X [signature]	**Karyl L. Carrasquilla**	**860-706-5055**

NAME OF EACH PARTY SERVED *	ADDRESS AT WHICH SERVICE WAS MADE
Cathy Dowd, Assistant Bar Counsel **Attorney Anthony Nuzzo** **Attorney Howard Altschuler**	**Statewide Grievance Committee** **Nuzzo & Roberts LLC, One Town Center, Cheshire, CT 06708** **21 Perkins Road, Bethany, CT 06524**

** If necessary, attach additional sheet with names of each party served and the address at which service was made.*

STATE OF CONNECTICUT
JUDICIAL BRANCH

STATEWIDE GRIEVANCE COMMITTEE
Cathy A. Dowd, *Assistant Bar Counsel*

287 Main Street
Second Floor – Suite Two
East Hartford, CT 06118-1885
(860) 568-5157 Fax (860) 568-4953
Judicial Branch Website: www.jud.ct.gov

January 21, 2016

Attorney Karyl Carrasquilla
Office of the Chief Disciplinary Counsel
100 Washington Street
Hartford, CT 06106

RE: Grievance Complaint #15-0137, D'Attilo v. Nastri

Dear Attorney Carrasquilla:

Your January 19, 2016 motion for continuance of the February 4, 2016 hearing in connection with the above referenced matter has been **denied**. Accordingly, the hearing will go forward as scheduled in Hartford on February 4, 2016.

Very truly yours,

Cathy A. Dowd
(Extension 3018)

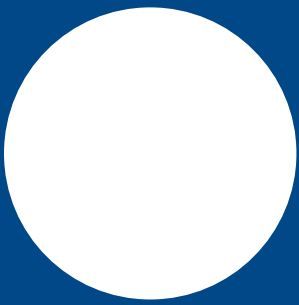
CAD
Cc: Attorney Kathleen Nastri
Attorney Anthony Nuzzo, Jr.
Attorney Howard Altschuler
Attorney Sue A. Cousnineau
Attorney Tracie L. Molinaro
Mr. Jonathan Shugarts

OFFICE OF
DISCIPLINARY COUNSEL
2016 JAN 22 AM 11:03
RECEIVED

[A391]

Attorney Grievance Procedures in Connecticut

Your Rights as a Complainant in the Grievance Process



State of Connecticut
Judicial Branch
www.jud.ct.gov

[A392]

Attorney Grievance Procedures in Connecticut

To the Reader

This pamphlet is designed to help you understand attorney grievance procedures in Connecticut. It explains what a grievance is, how to file a grievance complaint and what will happen procedurally after a grievance complaint is filed. It also provides information about other action that you may want to consider.

Please read this pamphlet carefully. It contains important information that you should know before you decide whether to file a grievance complaint.

The information contained in this pamphlet is applicable to grievance complaints filed on or after January 1, 2004. For grievance complaints filed before January 1, 2004, please refer to the previous version of this pamphlet, JD-GC-8 Rev. 12-2000, which is available on the Judicial Branch website at www.jud.ct.gov.

9. What actions may be taken if a complaint is forwarded to a grievance panel?

The grievance panel will investigate the complaint. It may hold a hearing as part of its investigation. It will determine whether or not there is probable cause to believe that the attorney is guilty of misconduct.

A copy of the grievance panel's probable cause determination will be sent to you, to the attorney who is the subject of the complaint, and to the Statewide Grievance Committee, ordinarily not more than 140 days from the date of referral to the panel.

10. What is the Statewide Grievance Committee?

The Statewide Grievance Committee has the authority to conduct further review of some of the grievance panel's determinations.

The Committee consists of 21 members, at least seven of whom are not attorneys. The Statewide Grievance Committee may act as a full committee or through subcommittees known as reviewing committees.

11. What actions may be taken by the Statewide Grievance Committee after a grievance panel finds no probable cause that the attorney is guilty of misconduct?

If the grievance panel determines that probable cause does not exist, it will dismiss the complaint without further review by the Statewide Grievance Committee unless the complaint alleges that the attorney committed a crime, in which case it will be reviewed by the Statewide Grievance Committee or a reviewing committee. If the grievance panel determines that probable cause of misconduct does exist, the Statewide Grievance Committee or a

reviewing committee will conduct a hearing that is open to the public.

12. What actions may be taken by the Statewide Grievance Committee after probable cause is found?
If it is determined that probable cause of misconduct exists, the Statewide Grievance Committee or a reviewing committee conducts a hearing that is open to the public.

After the hearing, the Statewide Grievance Committee or a reviewing committee may decide to dismiss the complaint, to impose sanctions and conditions against the attorney, or to direct that the attorney be brought before the Superior Court for reprimand, suspension or disbarment in a proceeding known as a presentment.

The Statewide Grievance Committee or a reviewing committee may impose the following sanctions and conditions:

(1) reprimand;
(2) restitution, for example, return of property belonging to the complainant;
(3) assessment of costs;
(4) an order that the attorney return a client's file to the client;
(5) a requirement that the attorney attend continuing legal education courses, at his or her own expense, regarding one or more areas of substantive law or law office management;
(6) an order to submit to fee arbitration;
(7) with the attorney's consent, an order to submit to periodic audits and supervision of the attorney's trust accounts;

Law Offices of Howard Altschuler

21 Perkins Rd.
Bethany, CT 06524
Voice: (234) 567-9897
Fax: (815) 846-1664
Website: www.legal-malpractice.com
Email: legalmalpractice@gmail.com

ADMITTED:

STATE COURTS:
CT, NJ, NY, PA

FEDERAL APPELLATE COURTS:
UNITED STATES SUPREME COURT
2ND CIR. CT. OF APPEALS
3RD CIR. CT. OF APPEALS
9TH CIR. CT. OF APPEALS

FEDERAL TRIAL COURTS:
SOUTHERN DISTRICT OF NEW YORK
EASTERN DISTRICT OF NEW YORK
DISTRICT OF CONNECTICUT
DISTRICT OF NEW JERSEY

FEDERAL BANKRUPTCY COURTS:
DISTRICT OF CONNECTICUT
SOUTHERN DISTRICT OF NEW YORK

New York Office:
281 Garth Rd.
Building C- 3D
Scarsdale, NY 10583
Please Reply to Bethany Office

February 5, 2016

Karyl L. Carrasquilla, Esq.
Chief Disciplinary Counsel
Office of Chief Disciplinary Counsel
100 Washington Street, Hartford, CT 06106
Via Email Karyl.Carrasquilla@jud.ct.gov
Cc: Michael Bowler

Dear Attorney Carrasquilla,

First, I did not ask you this before, but if you submitted a reply to Attorney Nuzzo's Jan. 28 submission, I request a copy of that as well. Thank you.

Second, I enclose today's email chain (starting on page 4 below) regarding the material misrepresentation issue related to Forman. Based upon the following, I am again asking that you contact the Grievance Committee immediately to inform them that Kathleen Nastri, through her attorney, misrepresented material facts. *Compare Daniels v. Alander*, 268 Conn. 320 (2004) (holding that an associate attorney has a duty to correct material misrepresentations that employer-attorney made to a trial court).

Moreover, based on the Nuzzo misrepresentation (Jim Horwitz was also in the room and said nothing so it can be fairly described as the Nuzzo/Nastri/Horwitz misrepresentation), you now have *additional* evidence that the respondents knowingly and improperly deducted at least $57,000 from the D'Attilos' trust funds to pay bills that have never been produced. Mr. Forman's sworn testimony establishes he did not charge the amount KKB deducted. **To the contrary Mr. Forman testified that it would have**

been "outrageous" if he had charged those extra fees. See page 6 below. Mr. Forman is outraged, but you are not. Why is that?

It is my hope and expectation that as the chief prosecutor for ethics in the state of Connecticut that you have an obligation to make sure the Grievance Committee has accurate information at all times, but especially when *you* are asking the Committee to approve a settlement of a grievance that *you* proposed. Although you stood up at the hearing and asserted to the Committee that I had not accurately stated the law (see page 3 below regarding that issue), you said *nothing* to the Committee to correct the Nuzzo/Nastri/Horwitz serious misstatement of material fact on this crucial issue directly related to your proposed disposition. There were many other misrepresentations made by Attorney Nuzzo that I will address at another time.

Attorney Nuzzo, in the presence of Kathleen Nastri and Jim Horwitz, argued that the $82,000+ was a proper deduction **because Mr. Forman had testified at trial that he had done hundreds of hours of work**. The court transcript indicates that both attorneys Nastri and Horwitz were present in the courtroom when Forman testified.

Of significant concern in your email today (see page 4): you apparently are not even sure whether you presented the evidence regarding Mr. Forman. For example, you write in your email: "I *believe* that the below transcript excerpt [regarding Forman] is part of the record." Emphasis added. You also do not say whether you specifically communicated to the Grievance Committee the information that I previously provided to you regarding the Forman and other issues. I have not been given a complete copy of all of the submissions, so I have no way to double check this. In any case, in the *Parnoff* matter, your Office is currently arguing to the Connecticut Supreme Court in part as follows:

> Misappropriation … includes defalcation, defined in Black's as "misappropriation of trust funds or money held in any fiduciary capacity**, and failure to properly account for such funds,**" and conversion, which is '[a]ny unauthorized act which deprives an owner of his property permanently or for an indefinite time.'

The D'Attilos never authorized KKB to pay bills that do not exist. It is irrelevant whether the check to Forman for $68,000+ was issued as a mistake (Attorney Nuzzo indicates that it was not) or a deliberate overpayment which was deliberately accepted by Mr. Forman, but you, as Chief Disciplinary Counsel know for a fact, based on Mr. Forman's testimony, it was "outrageous" for him to get paid that money. Yet you said nothing to the Committee and refuse my request to set the record straight as well.

You now have evidence KKB is covering up illegitimate charges that Mr. Forman himself states are "outrageous". The question is: at what point will enough be enough for you to take proactive action that sends a message to the Connecticut bar, the public, and the courts that attorneys are not allowed to take client funds to pay anything or anyone unless it is a legitimate charge. Since when has your office ever previously proposed to reprimand an attorney for converting $57,000 or more of client funds?

I am writing this because it is still not too late for you to make this right. For example, you should contact the Grievance Committee immediately to let them know that based on the Nuzzo/Nastri/Horwitz misrepresentation to the Grievance Committee that you are immediately

withdrawing the offer and will proceed to full hearing. In addition, based on Nuzzo/Nastri/Horwitz's misrepresentation, you should at long last demand KKB immediately pay full restitution of these and other overcharges that I have brought to your attention.

Moreover, Attorney Nastri did not indicate any remorse, did not make any indication that any steps had been taken to correct the accounting problems, gave no assurances other KKB clients have not been harmed (and disturbingly, you asked for no such representations from her). You should now order or request a complete audit of KKB's finances.

Third, in replay to your email below (page 4) where you assert that I "also misstated facts" as to the purpose behind the disciplinary process. While I am not sure what that has to do with Forman, you went out of your way to tell the Grievance Committee that. However, it is not clear to me what "fact" I misstated. I have stated *opinions* about my interpretation of law based in part on the following:

> If a court disciplines an attorney, it does so "not to mete out punishment to an offender, **but [so] that the administration of justice may be safeguarded and the courts and the public protected** from the misconduct or unfitness of those who are licensed to perform the important functions of the legal profession." *Statewide Grievance Comm. v. Botwick*, 226 Conn. 299, 307 (1993) citing In re Durant, 80 Conn. 140 (1907)

You also state in your email: "please take care to correctly state the facts regarding procedure and the law." Of course, if I have made a misstatement of fact or law I will correct it. I am glad you are concerned about accuracy, though I do not see that same concern applied to the KKB respondents. However, I am unaware of any misstatement of fact and you do not cite any specifics in your email. Please point out exactly what I have written that is so inaccurate it was worth taking the Committee's time to tell them about it. Of course, if you can point to a specific error on my part, I will do what I can to correct it.

Unfortunately, this is not the first time that this is happened. On October 17, 2015, you wrote to me: "you misquote and/or mischaracterize some of the statements that I made to you in our telephone call on October 16, 2015." I wrote to you on October 22, 2015 (and other times as well): "if you believe there is anything inaccurate or incomplete in what I have written before or write today, please let me know." To date, you have never pointed out a single misstated or mischaracterized fact on my part.

Again, I urge you take immediate action on the Forman issue. Every minute that you wait increases the chances a grave injustice will take place on your watch, and that the Committee will decide based on false representations of fact that you failed to bring to their attention.

Sincerely,

Howard Altschuler

FEBRUARY 5 EMAIL CHAIN:

From: Carrasquilla, Karyl [mailto:Karyl.Carrasquilla@jud.ct.gov]
Sent: Friday, February 5, 2016 10:26 AM
To: Howard Altschuler <legalmalpractice@gmail.com>
Cc: Bowler, Michael <Michael.Bowler@jud.ct.gov>
Subject: RE:

Dear Attorney Altschuler:
The Reviewing Committee has the materials that are in the record. (I believe that the below transcript excerpt is part of the record) Statements made by myself, you and Attorney Nuzzo were merely statements/argument. Not evidence.
As we discussed after the hearing yesterday, you also misstated facts regarding the attorney disciplinary process in Connecticut.
As also discussed, please take care to correctly state the facts regarding procedure and the law, especially when giving statements to the public/media.
Thank you,
Karyl L. Carrasquilla

From: Howard Altschuler [mailto:legalmalpractice@gmail.com]
Sent: Friday, February 05, 2016 10:17 AM
To: Carrasquilla, Karyl
Cc: Bowler, Michael
Subject: RE:

Dear Attorney Carrasquilla:

Although Attorney Nuzzo made many significant factual misstatements yesterday, I wanted to point one out to you since it is directly relevant to the issues the Committee is considering, and I would ask that you bring this significant misrepresentation to the attention of the Committee. Specifically, as I recall, Attorney Nuzzo stated in essence that Mr. Forman's May 2011 testimony indicated that he was entitled to $82,000+ because Forman worked hundreds of additional hours that had yet to be billed. That was a false statement on the part of Attorney Nuzzo.

Here is Mr. Forman's testimony on the page before he states that his total fees were going to be $23-$25,000. Forman specifically swears under oath that he had done a total of about **100** hours of work (doesn't say anything about hundreds of hours) but he was **not** going to bill for all of his work. To the contrary, he said that it would be "outrageous" if he charged for all the work he did. This is a material misrepresentation that the Committee should hear about.

Next page, Forman testifies:

that are mentioned that you have in your report, that are as needed or if needed, that they are not to be calculated, to use your term?

A Not in this matter; but, yes, I have told him in other cases.

Q Okay. Do you know if he knows that, in this case, not to calculate those numbers?

A I really don't know what he's going to say.

Q Now, in this case alone, if we've done the math right, up to date you've been paid approximately $20,000, not counting today?

A Oh -- And I know -- I mean, I'll be honest with you, I looked at it before I came here. I didn't bill for everything. **I must have over a hundred hours in this file.**

Q That you have not billed for so far?

A **And I can't bill for everything, that would be outrageous.**

Q Okay. That's not my question. My question is have you billed in this case, Doctor, approximately $20,000?

A Probably.

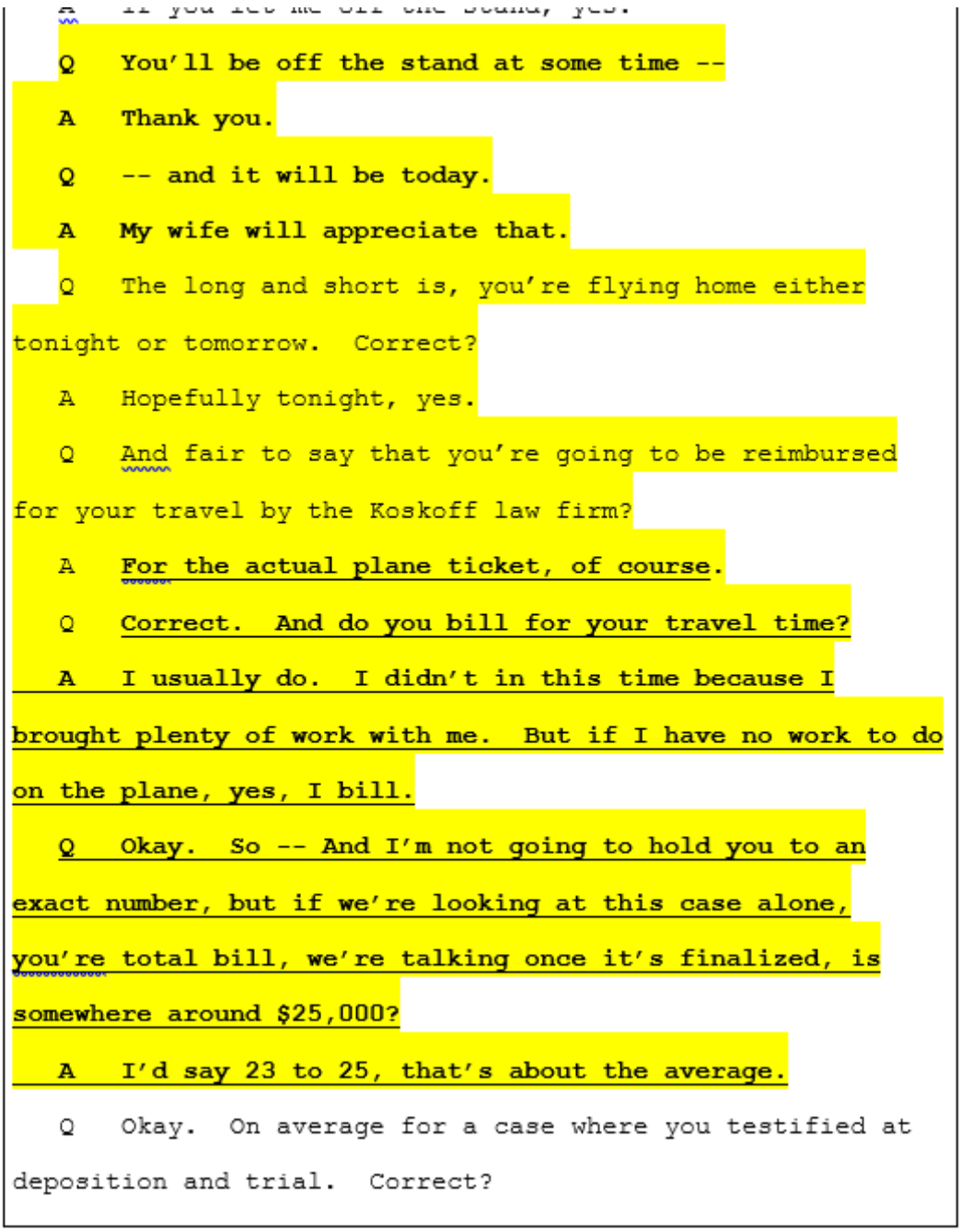
Q Okay. And what you're telling the jury is you have time that you have not billed for?

A **That I'm not going to bill for.**

Q Correct. And you're going to bill for today, I assume, correct?

A Oh, obviously, of course.

Q And you flew in from Florida, was it last night?



Q You'll be off the stand at some time --
A Thank you.
Q -- and it will be today.
A My wife will appreciate that.
Q The long and short is, you're flying home either tonight or tomorrow. Correct?
A Hopefully tonight, yes.
Q And fair to say that you're going to be reimbursed for your travel by the Koskoff law firm?
A For the actual plane ticket, of course.
Q Correct. And do you bill for your travel time?
A I usually do. I didn't in this time because I brought plenty of work with me. But if I have no work to do on the plane, yes, I bill.
Q Okay. So -- And I'm not going to hold you to an exact number, but if we're looking at this case alone, you're total bill, we're talking once it's finalized, is somewhere around $25,000?
A I'd say 23 to 25, that's about the average.
Q Okay. On average for a case where you testified at deposition and trial. Correct?

Therefore given the seriousness of attorney Nuzzo's material misrepresentation, I would hope ask that you not allow that misrepresentation of fact to go unchallenged.

Please let me emphasize that there were many other material misrepresentations of fact by Mr. Nuzzo and as I go over what happened with other people who were there, I may alert you to others as well.

Thanks,
Howard Altschuler
***

SUPREME COURT

of the

STATE OF CONNECTICUT

S.C. 19535

DISCIPLINARY COUNSEL

PLAINTIFF-APPELLANT

V.

LAURENCE PARNOFF

DEFENDANT-APPELLEE

BRIEF OF THE PLAINTIFF-APPELLANT

For the Plaintiff-Appellant

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To be argued by: Suzanne B. Sutton

PRINCIPAL ISSUE ON APPEAL

This Court granted certification on the following question:

"Did the Appellate Court properly uphold the trial court's determination that the defendant had not engaged in the "knowing misappropriation" of client funds under Practice Book § 2-47A?"

S.C. 19535	:	SUPREME COURT
	:	STATE OF CONNECTICUT
DISCIPLINARY COUNSEL	:	
V.	:	OCTOBER 30, 2015
LAURENCE PARNOFF	:	

APPELLANT'S BRIEF

I. STATEMENT OF THE NATURE OF THE PROCEDINGS AND OF THE FACTS OF THE CASE:

Darcy Yuille (Hereinafter "Yuille") retained Attorney Laurence Parnoff (hereinafter "Defendant") on December 5, 1998 to represent her in a claim against her former employer arising from its conduct in connection with her workers' compensation case. The signed retainer agreement provided that the Defendant would represent her in the bad faith claim and would receive a contingency fee of forty percent of her recovery. A 119. Yuille testified that the Defendant never informed her that his fee was in excess of any state statute. A 225.

Defendant filed suit against the employer and the parties agreed to go to binding arbitration. Prior to the arbitration award, Attorney Laura Mooney (Hereinafter "Mooney"), who represented Yuille in the underlying worker's compensation claim, filed an appearance in the case filed by Defendant. The arbitration resulted in an award for Yuille of $1,093,032.93 in June of 2004. A 125.

In August of 2004, Yuille e-mailed Defendant to say that she contested the forty percent contingency fee as being in violation of General Statutes §52-251(c) (hereinafter

"the fee cap statute"). A 126. On August 18, 2004 and again on August 24, 2004, Defendant communicated to Yuille in writing to write in and initial the fee amount that she would agree to and he would escrow the balance. On August 30, 2004, Yuille signed the settlement statement prepared by Defendant, crossing out the $438,413.17 in attorney's fees (based upon 40%) and authorizing $125,000 towards fees and asking him to escrow the disputed portion. A 127-29, A242-43. [1] The Defendant confirmed to Yuille that he would escrow the disputed funds.

Separately, on August 27, 2004, Defendant filed a law suit against Mooney alleging that she interfered in his handling of Yuille's case, *Parnoff v. Mooney*, No. FBT CV 04-4006769. On October 6, 2004, Mooney filed a motion to compel disbursement of settlement proceeds and to escrow disputed funds. A 131-33. On November 16, 2004, after a hearing on that motion, in anticipation of a court order requiring the funds to be held in escrow and by agreement, Yuille signed the settlement proceeds checks and Defendant deposited the proceeds into an escrow account in the name of "Laurence V. Parnoff, Trustee for Darcy Yuille". A 138-39. Defendant placed into that trust account the sum of $971,032.93, the balance of the original $1,096,032.93 award less the $125,000 fee that Yuille agreed the Defendant could pay himself. From that account, Defendant also paid costs and paid Yuille her share of the net proceeds, leaving $313,413.17 of disputed funds in the trust account subject to disbursement upon resolution of the dispute. A 136-39.

[1] Once the Defendant became aware that Yuille contested the fee he had an obligation to protect the disputed funds until the matter was resolved pursuant to Rule of Professional Conduct 1.15(f). Rule 1.15(f) states: "when in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claims interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute."

Defendant, in a letter to Yuille dated November 27, 2004, confirmed that the disputed funds remained in escrow "as per our earlier correspondence." A 244. Defendant recognized that placing the disputed funds in escrow was the "ethical thing to do". A 136.

In January of 2005, Defendant filed suit against Yuille for breach of contract arising from her refusal to agree to his fee. *Parnoff v. Yuille*, FBT CV- 05-4006769. In his complaint, he admitted that he "was required, by professional integrity, to agree to hold, and has held, in escrow, the sum of $313,413.17." A 259. Yuille filed an answer and two special defenses: Her special defenses were, (1) that the 40% attorney's fee was excessive and unconscionable, and (2) that the contract was unenforceable because it violated Connecticut's fee cap statute. A 263-64.

The two cases, *Parnoff v. Mooney* and *Parnoff v. Yuille*, were consolidated (the consolidated cases) and tried to a jury in May 2010. At the time of the trial, the disputed funds were held in a Certificate of Deposit at Chase Bank in the name of "Laurence V. Parnoff, Trustee for Darcy Yuille" (hereinafter "CD"). The CD in which the disputed funds were held was created in January 2005 and automatically renewed every six months. By notification to the Trustee the CD statements explained that "if you wish to transfer your funds to another account or redeem your CD, you must do so within ten days after (the maturity date)...". A 266. If no affirmative contact was made to the bank, the CD would automatically mature and renew every six months thereafter.

Prior to the start of the May 2010 trial, and pursuant to the requirements under the CD, Defendant affirmatively engaged in the act of notifying the bank not to renew the escrow account. A 157. On May 5, 2010, well after having given the bank instructions not to

renew the CD, Defendant testified at trial that he had "escrowed the funds because of the dispute as he was ethically bound to do so and because he had represented to Yuille that he would do so" and that he wouldn't touch the funds. A 146, A 201-05. On May 14, 2010, Yuille testified at trial that Defendant would need to resolve matters with Mooney before she was willing to give him his fee and that she was "trying to get her own fee dispute resolved." A 168. On May 20, 2010 the jury awarded Defendant $252,044.27, which represented the fee to which he would have been entitled by applying the fee cap statute to the fee agreement. [2]

However, pursuant to his prior instructions to the bank, the CD was not renewed upon the renewal date of July 26, 2010 and instead, the entire $363,960.87 ($313,413.17 plus accrued interest) was transferred, despite the trial court's decision, to Defendant's personal account and used for his own personal gain. A 158. Approximately one week after the July 26th conversion, Defendant filed an appeal of the trial court's decision. Yuille filed a cross appeal. Defendant never told Yuille that he had converted all of the funds.

Yuille did not find out that the Defendant had taken all of the disputed funds until March 29, 2011, at the second of two pre-argument conferences (hereinafter "PAC") related to the appeal. A 268. After discovering that the disputed funds were no longer being held in escrow, Yuille's counsel, attorney Cox, filed several motions to obtain an accounting for her client, claiming that the Defendant's misappropriation of the funds violated the court's order and violated Rule 1.15 of the Rules of Professional Conduct. The Defendant successfully resisted all these attempts on the grounds that, although an escrow

[2] The jury verdict held in favor of the Defendant against Yuille on the breach of contract claim and in favor of Yuille and against the Defendant on the Defendant's unjust enrichment claim.

was discussed on the record and agreed to, there was no actual executed court order that the funds be held in escrow. Several motions were filed and hearings were held. Ultimately, Judge Gilardi held that because no written order regarding the escrow had ever been signed, there was no court order that the funds be escrowed. A 269. The alleged ethical violations were never ruled upon.

Based upon the Defendant's misconduct and misappropriation, Yuille filed a grievance in April 2011, *Yuille v. Parnoff*, No. 11-0359. After a contested hearing, the statewide grievance committee ordered a presentment. The presentment complaint was filed on December 7, 2012.

Meanwhile, on November 20, 2012, the Appellate Court rendered a decision on Defendant's appeal of the judgement in the consolidated cases, *Parnoff v. Yuille*, 139 Conn. App. 147 (2012). The Appellate Court reversed the judgment rendered in favor of the Defendant on the breach of contract counts and remanded to the trial court. The Appellate decision extinguished any contractual claim Defendant had to Yuille's funds of approximately $363,960.87. The Appellate Court found that the "plaintiff is not entitled to recover on a contract that violates public policy", and that "the contract...as written, imposed no legal obligation on [Yuille]." Id. at 172. The Defendant filed a petition for certification which was denied on January 24, 2013.[3] Again, despite the loss of his appeal and the legal decision establishing that Yuille was entitled to all of the funds, Defendant failed to deposit the $363,960.87 back into escrow or turn over and account for any funds to Yuille.

[3] Parnoff v. Yuille, 139 Conn.App.147 (2102), cert. denied, 307 Conn. 956(2013)

The presentment trial commenced on February 22, 2013, almost one month after the certification request on the consolidated cases decision was denied. Defendant still had not created a new escrow for the $363,960.87 or made any payments to Yuille. [4] The presentment trial was heard over four days. The trial court made a number of critical findings. First, it court found that no escrow order was necessary to trigger the Defendant's fiduciary obligation to hold the disputed funds in escrow. A 31. Second, that the Defendant's unilateral decision that an escrow was no longer required was unreasonable. A 31. Third, that the Defendant had a duty to be transparent in the handling of Yuille's funds. A 32. Fourth, that the funds in the escrow account were not the Defendant's to take. A 32. Fifth, that Yuille was entitled to notice and an accounting before the Defendant could take her money. A 32. Sixth, that Defendant's belief that Yuille would be satisfied once Mooney was paid was erroneous and unreasonable. A 33. Finally, that Defendant's testimony regarding his escrow account was incomprehensible. A 32-33. Despite these findings, the trial court then found that Defendant's conduct was not a reflection of any lack of integrity on his part and that he did not act willfully or with intent to deceive Yuille. As such, the trial court reasoned that the conduct did not give rise to a knowing misappropriation of funds pursuant to Practice Book §2-47A. The trial court found a violation of Rule 1.15(f) of the Rules of Professional Conduct and issued a reprimand.

[4] Defendant did place only $71,000 into a newly established escrow account to avoid interim suspension. No funds were ever transferred to Yuille. Not only did Defendant again appeal the trial court decision after remand (A.C. 36106), but in July of 2013, Yuille was forced to file suit against Defendant to collect her funds *Yuille v. Parnoff*, FBT CV 13-6036602S. This suit is presently stayed. Defendant has also been arrested with pending felony charges for converting Yuille's money.

Appellant filed an appeal arguing in part that the trial court failed to properly apply the correct standard under Practice Book § 2-47A to the facts as found by the trial court. The Appellate Court incorrectly affirmed the trial court's decision that the Defendant acted with carelessness rather than with the awareness necessary to find that the Defendant violated Practice Book §2-47A. In so doing the Appellate Court chose not to focus on all of the facts as found by the trial court and as enumerated above, but on the trial court's general presumption that Defendant acted without intent to deceive Yuille and on the "unreasonable belief" that that the ownership of the funds was no longer in dispute. The Appellate Court reiterated the fact that there was a torturous and very confusing fee dispute. A 93. The Defendant is an attorney of 43 years and generated the law suits himself. Certainly his own pleadings and his own testimony did not confuse him. The Appellate Court improperly affirmed a decision wherein the general presumptions of fact were not supported by the actual findings of fact.

The Appellate Court did not properly review the trial court's application of its findings of facts to the knowing misappropriation standard under Practice Book § 2-47A. Instead, the Appellate Court created a nexus between the trial court's reference to Practice Book §2-47A and its actual application of the proper standard. A 92. Mere reference of a statute in a trial court decision does not necessarily result in its proper application. In this case the facts show otherwise. The Appellate Court failed to review the trial court's findings of unreasonable, erroneous and indecipherable defenses raised by the Defendant. It also failed to review or reference the fact that the Defendant took the funds regardless of its own Appellate Court decision in Parnoff v. Yuille, 139 Conn.App.147 (2102), cert. denied, 307

Conn. 956(2013) and failed to return any of the funds even after the request for certification of that decision was denied.

Although the Appellate Court agreed that *In Re Wilson*, 81 N.J. 451 (1979) and its progeny were instructive, it incorrectly found that the trial court decision was not at odds with those cases. A 92. The facts of the present case clearly support a finding that the trial court's decision was at odds with *Wilson* and its progeny. The New Jersey decisions properly analyzed the conduct as committed and the defenses as raised. In this case, the conduct was clear and there were no good faith defense raised. There were only findings of unreasonable, erroneous and incomprehensible assertions made by the Defendant that could not be supported by action or testimony. The Appellate Court wrongly affirmed a decision based upon unreasonable, erroneous and incomprehensible assertions. It then failed to properly apply those unreasonable, erroneous and incomprehensible assertions to Practice Book § 2-47A.

To this date, Yuille continues to fight to receive the funds which should have been escrowed and available to her once this Court denied Defendant's petition for certification. See, Parnoff v. Yuille, A.C. 36106.

This Court granted certification on the following question:

"Did the Appellate Court properly uphold the trial court's determination that the defendant had not engaged in the "knowing misappropriation" of client funds under Practice Book § 2-47A?"

II. ARGUMENT:

The Appellate Court erred when it upheld the trial court's determination that the Defendant had not engaged in the "knowing misappropriation" of client funds under Practice Book §2-47A.

A. Standard of review:

In determining whether the trial court correctly interpreted a statute, the standard of review is plenary. *Parnoff v. Yuille*, supra, 139 Conn. at 159. The court applies the same principles to the interpretation of practice book rules as apply to the interpretation of statutes. "The interpretation and application of a statute, as well as a Practice Book provision, involves a question of law over which our review is plenary...When construing a statute [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature...In other word, we seek to determine , in a reasoned manner, the meaning of the statutory language as applied to the facts of [the]case... " *Wiseman v. Armstrong*, 295 Conn. 94, 99 (2010). (Internal citations omitted).

We previously have recognized that the construction and interpretation of a statute is a question of law for the courts, where the administrative decision is not entitled to special deference.... Questions of law [invoke] a broader standard of review than is ordinarily involved in deciding whether, in light of the evidence, the agency has acted unreasonably, arbitrarily, illegally or in abuse of its discretion.... Because this case forces us to examine a question of law, namely, [statutory] construction and interpretation ... our review is de novo.... We are also compelled to conduct a de novo review because the issue of statutory

construction before this court has not yet been subjected to judicial scrutiny.

Okeke v. Comm'r of Pub. Health, 304 Conn. 317, 324-25, 39 A.3d 1095, 1101 (2012)

B. General principles of attorney discipline and misappropriation of client's funds:

Attorney discipline proceedings are for the purpose of preserving the courts from the official ministrations of persons unfit to practice in them." (Internal citations omitted.) *Statewide Grievance Committee v. Shluger*, 230 Conn. 668, 674. "[I]if a court disciplines an attorney, it does so not to mete out punishment to an offender, but [so] that the administration of justice may be safeguarded and the courts and the public protected from the misconduct or unfitness of those who are licensed to perform the important functions of the legal profession." (Internal citation omitted.) Id. at 675. One of the ways a court may accomplish the goal of protecting the public and the judicial system is by imposing a sanction that deters other attorneys from engaging in similar misconduct. *Statewide Grievance Committee v. Fountain*, 56 Conn. App. 375, 378 (2000); *Statewide Grievance Committee v. Lambeck*, 2005 Ct. Sup. 7904, 7907 – 08, citing *Statewide Grievance Committee v. McGee*, 2003 Ct. Sup. 10990, 10995 .

"An attorney's misappropriation of funds entrusted to him is widely recognized as one of the most serious forms of professional misconduct. … It strikes at the heart of the relationship of trust and confidence that is so necessary between attorney and client, and it reveals a lack of the integrity which is a fundamental requirement in order to be qualified to practice law." (Internal citations omitted.) *Matter of Burton*, 472 A.2d 831, 847-48 (D.C. 1984), cert. den. 469 U.S. 1071 (1984).

A fiduciary must act with "scrupulous good faith and candor....[The fiduciary] must act honestly, and with the finest and undivided loyalty to the trust, not merely with the standard of honor required of undivided loyalty to the trust, not merely with that standard of honor required of men dealing at arm's length and the workaday world, but with a punctilio of honor the most sensitive." *Konover Development Corp. v. Zeller*, 228 Conn. 206, 220 (1994). A claim for breach of fiduciary duty involves a breach of duty of loyalty and honesty. *Beverly Hills Concepts, Inc. v. Schatz, Schatz, Ribicoff & Kotkin*, 247 Conn. 48, 57 (1998).

Misappropriation is the umbrella term under which the different ways of misusing client funds are grouped. Black's defines it as "[t]he unauthorized, improper, or unlawful use of funds or other property for purposes other than that for which intended ... including not only stealing but also unauthorized temporary use for [the] lawyer's own purpose, whether or not he derives any gain or benefit therefrom." Black's Law Dictionary (8th ed. 2004). It thus includes defalcation, defined in Black's as "misappropriation of trust funds or money held in any fiduciary capacity, and failure to properly account for such funds," and conversion, which is "[a]ny unauthorized act which deprives an owner of his property permanently or for an indefinite time." Paying one client out of money due another, keeping an unearned advance fee, holding on to unused escrow funds, and applying client funds to disputed client's bill are all examples of conversion.

C. Practice Book Section 2-47A and the knowing standard:

Practice Book § 2-47A. "Disbarment of Attorney for Misappropriation of Funds" states that; "In any disciplinary proceeding where there has been a finding by a superior

court that a lawyer has knowingly misappropriated a client's funds or other property held in trust the discipline for such conduct shall be disbarment" and was adopted by the judges of the superior court in 2006 and took effect on January 1, 2007. In applying §2-47A, the mental state necessary to prove "knowing misappropriation" is clearly defined in Practice Book §1.0 (g); "'knowingly,' 'known' or 'knows' denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances." While there is no Connecticut case law directly on point interpreting §2-47A, New Jersey law is informative on the subject, particularly in light of the commentary to §2-47A noting that the rule was adopted as a codification of the "*Wilson*" rule, as set out in *In Re Wilson*, 81 N.J. 451 (1979).[5]

In Re Wilson, is the seminal decision holding that disbarment is the presumptive and only appropriate sanction for knowing misappropriation of client's funds. The *Wilson* court started with the premise that "the principal reason for discipline is to preserve the confidence of the public in the integrity and trustworthiness of lawyers in general.... From that point of view, anything less than strict discipline in cases like this would be a disservice to the bar, the judiciary, and the public." "Abuse of trust has always been recognized as particularly reprehensible: '[T]here are few more egregious acts of professional misconduct of which an attorney can be guilty than misappropriation of a client's funds held in trust.'" Id.

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[5] COMMENTARY – 2007: "The above rule is a codification of the Wilson rule. In *In re Wilson*, 81 N.J. 451, 409 A.2d 1153 (1979) the New Jersey Supreme court articulated a rule that the universal response in cases of knowing misappropriation of clients' money should, without exception, be disbarment.

See also the contemporaneous revision to Section 2-53(e), which provides that an application for reinstatement may not be considered until twelve years have elapsed from the date of an order disbarring an attorney for misappropriation of funds.

The *Wilson* court was inspired to rule as it did because of the disparity in sanctions in misappropriation cases, based on the judges' consideration of various mitigating factors in previous misappropriation cases. Id. at 456. The *Wilson* court rejected restitution as a mitigating factor, because it is based on the "mistaken premise that the unauthorized use of clients' funds is excusable when accompanied by an intent to return them." Id. at. 458. The *Wilson* court dismissed "the prior outstanding career of the lawyer" as a mitigating factor, because "[t]his offense against common honesty should be clear to even the youngest; and to distinguished practitioners, its grievousness should be even clearer." Id. at 460. Thus, *Wilson* took a hard line, and held that the continued confidence of the public in the integrity of the bar and the judiciary justified the harsh result of disbarment in cases of knowing misappropriation of clients' funds.

The New Jersey standard for knowing misappropriation has two prongs: (1) knowledge that the money belonged to the client, and (2) knowledge that the client has not authorized the transfer. "A lawyer's subjective intent, whether it be to 'borrow' or to steal, is irrelevant to the determination of the appropriate discipline in a misappropriation case. *In the Matter of Freimark*, 152 N.J. 45, 55 (1997). "This standard is explicitly divorced from intent." Id. Intent cannot be used as a mitigating factor. See also, *In the Matter of Blumenstyk*, 152 N.J. 158, 162 (1997) (where attorney attempted to excuse his misappropriation with evidence that he merely intended to "borrow" funds). The *Freimark* court found that a "[w]illfully blind Defendant who is 'aware of the highly probable existence of a material fact but does not satisfy himself that it does not in fact exist is as culpable as

the Defendant who knowingly misappropriates." In the *Matter of Freimark*, supra, 152 N.J., 56.[6]

The Connecticut jurisprudence that scienter is not a necessary element of professional misconduct is consistent with §2-47A and the *Wilson* standard for knowing misappropriation. *Ansell v. Statewide Grievance Committee*, 87 Conn. App. 376, 388-89, (2005). *O'Brien v. Superior Court*, 105 Conn. App. 774, 804, (2008). "It is not a defense to an ethical violation that the attorney did not act in bad faith or intend to violate the code…" (Internal citations omitted.) *Machado v. Statewide Grievance Committee*, 93 Conn. App. 832, 843 (2006). (Internal citations omitted). A violation of Rule 1.15 does not require a finding of corrupt motive or bad faith. In *Statewide Grievance Committee v. Terzis*, 1998 Ct. Sup.11131, 1134, Citing *In Re Flanagan*, 240 Conn. 157 (1997), the court agreed that as with a judge, an attorney is subject to discipline "as long as he or she intends to engage in the conduct for which he or she is disciplined." Id. at 1135. See also, *Chief Disciplinary Counsel v. Zelotes*, 152 Conn. App. 380, cert. denied 314 Conn. 944 (2014), *Faile v. Zarich*, No. HHD CV 06-5015994 (Jun. 15, 2009).

The Judges of the Superior Court who drafted, approved and passed Section 2-47A were well aware of the legal definitions of intentional, negligent and knowing. If they had wanted to mandate that Section 2-47A could only be violated by an intentional act they would have done so. Instead they chose the knowing standard and in the commentary explained that standard as codification of the *Wilson* case. The rule was written by and for lawyers. "The language of a rule setting guidelines for members of the bar need not meet

[6] But see, *In re Rogers*, 126 N.J. 345, 357 500 A.2d 141 (1991) (a good faith belief that the client consented to the use of his funds will negate a finding of knowing misappropriation).

the precise standards of clarity that might be required of rules of conduct for laypersons." See, *In re Comfort*, 150 P.3d 1011(Kan. 2007) ("word 'prejudicial' is universally found throughout the legal ... system.... It cannot be seriously contended that 'prejudicial' does not sufficiently define the degree of conduct which is expected of an attorney"); The meaning of a statute or in this case a Rule of Practice, shall, in the first instance, be ascertained from the text of the Rule itself and its relationship to other Rules. "If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. See, Conn. Gen. Stat. § 1-2z (plain meaning rule). "The interpretive construction of the rules of practice is to be governed by the same principles as those regulating statutory interpretation." *Commissioner of Social Services v. Smith,* 265 Conn. 723, 733-34 (2003). The Judges of the Superior Court were very clear as to what was meant by "knowing misappropriation"; simply that the lawyer must know that funds or property were not his and that he took them without agreement or court order. When construing a Rule of Practice, the objective should be to ascertain and give effect to the intent of the Judges who drafted the rule.

D. The Appellate Court erred when it affirmed the Trial Court's determination that the Defendant had not engaged in "knowing misappropriation":

In the present case, the trial court's evaluation of §2-47A through the lens of the tort concepts of intent and negligence is inconsistent with the objective expressed by the judges who passed Practice Book § 2-47A as modeled after *Wilson*. "Negligence is a concept rooted in tort law, and focuses on the consequences of the actor's conduct rather

than the actor's state of mind." *Trumbull Insurance Co. v. Braunstein & Todisco*, 2004 Ct. Sup. 9724, citing W. Prosser & W. Keeton, Torts 5th Ed. 1984), p. 169. "In negligence, the actor does not desire to bring about the consequences which follow, nor does he know they are substantially certain to occur, or believe that they will."

In professional negligence cases, the plaintiff in the attorney malpractice action must establish (1) the existence of an attorney-client relationship; (2) the attorney's wrongful act or omission; (3) causation; and (4) damages. *Mayer v. Biafore, Florek & O'Neill*, 245 Conn. 88 92 (1998). Analyzing the question of a knowing misappropriation in terms of negligence ignores the proper examination of the lawyer's conduct when invading his client's funds without permission and impermissibly expands the focus to an examination of the consequences the lawyer may have intended or should have known would follow the misappropriation. "The essence of *Wilson* is that the relative moral quality of the act … and the attorney's state of mind, is irrelevant; it is the mere act of taking your client's money knowing that you have no authority to do so that requires disbarment." *In re Noonan*, 102 N.J. 157, 160, 506 A.2d 722 (1986). See also Zazzali, James R., "The Whys and Hows of Permanent Disbarment: New Jersey's Wilson Rule, " 21 Geo..J. Legal Ethics 311, FN 63 (Spring 2008). The "knowing" standard defined in Rule 1.0(g) and applicable to the present matter by Practice Book §2-47A, is not a negligent standard nor is it an intentional tort standard.

Applying the concept of knowing misappropriation to the present case, all that is necessary to prove the Defendant knowingly misappropriated Yuille's funds is clear and convincing evidence that 1) he knew that his claim to the funds held in trust was in dispute,

and 2) he knew that the dispute had not been resolved, either by Yuille's authorization that he could take those funds for himself, or by the final resolution by a court. (In this case, Defendant disregarded Yuille's statements and the court's decision regarding the funds when he converted them). Whether the Defendant had any regard at all as to the consequences of his actions is irrelevant. Whether the Defendant has or lacks integrity is irrelevant. Whether the Defendant intended to deceive his client is irrelevant.

The question is also not whether the Defendant was acting reasonably or unreasonably when he took $363,960.87 in client's funds from the escrow and deposited them into his personal savings account; the only question is whether he knew that he was taking funds without approval or agreement. The facts showing that the Defendant knowingly misappropriated Yuille's funds are clear from the record. During the presentment trial, the Defendant testified on numerous occasions that he knew Yuille was claiming both that his fee was excessive and that the fee agreement was unenforceable and that he knew he was required to keep the money in escrow. A 126-27,42, 44, 50, 71, 111. The Defendant had no good faith argument that he was unaware that the funds were in dispute or unaware that he needed to hold the funds, in trust, until the court decided the issue. Regardless, the Defendant testified that "I told the bank before the - when the trial started not to renew the CD because something would happen at the trial that might determine where the money was going." A 157. By giving this instruction to the bank not to renew the CD in early 2010, the Defendant himself determined where the money would be going – into his personal account. The consolidated cases trial started in May 2010. By July 26, 2010 the CD that had been holding $363,967.87 of Yuille's money was liquidated

and the funds were deposited into the Defendant's personal account per his instructions to the bank. It is undisputed that Yuille did not authorize the Defendant to take the funds for himself. In fact, she was not even aware of the transfer. The Defendant's claim that he was entitled to take the disputed funds was correctly found by the presentment trial court to be erroneous and unreasonable and therefore not a good faith defense. The Defendant wanted the funds that were in the CD because he wrongfully considered them his fees. It was not by accident or mistake that he took them. Pursuant to Rule 1.0(g), knowing may be inferred by Defendant's actions and in this case his actions spoke volumes.

The trial court's description of the Defendant's misconduct as a "failure to escrow" underwhelmingly misstates the Defendant's violation. His misconduct was not in failing to escrow the funds; he did in fact escrow the funds for roughly six years. He was completely aware that the funds should be held in escrow. Nothing had changed. His misconduct was in taking the funds held in trust for himself from a properly established escrow account without Yuille's authorization and absent any court order.

The trial court wrote that it "firmly believes, however, that Defendant's failure to escrow the funds as required by rule 1.15(f) of the Rules of Professional Conduct was not a reflection of any lack of integrity on his part and that he did not act willfully or with intent to deceive Yuille. The court finds that his conduct does not give rise to a knowing misappropriation of funds pursuant to Practice Book Section 2-47A." A 33. Thus, the court expressed its findings and applied them to Section 2-47A as two "firm beliefs" about the Defendant: 1) that his failure to safeguard his client funds did not demonstrate any lack of integrity, and 2) that the Defendant did not act with any intent to deceive Yuille. First, while

credibility is traditionally an issue solely for the trial court, where the evidence is so obvious, a finding which sounds in credibility may be clearly erroneous. The Defendant testified that he was aware of his ethical obligations to hold Yuille's funds in escrow both before and after he took the money. The trial court found the Defendant's explanation for his belief that Yuille had agreed he could take the funds to be erroneous and unreasonable. The trial court also found that the lack of any court order requiring the funds to be escrowed did not obviate his obligation to continue to hold the funds in escrow. There was no factual finding to support any type of good faith defense. The Appellate Court also did not cite any support for a good faith defense to "knowing misappropriation."

Second, regardless of the fact that intent to deceive is completely irrelevant to the misappropriation analysis, the trial court's firm belief that the Defendant did not act with any intent to deceive Yuille, is inconsistent with the court's finding that he did not act with the openness and transparency required by his professional ethical obligation. The court specifically found that the Defendant did not notify Yuille that he had taken the money and that the Defendant did not give Yuille any notice or accounting before he took the money or even reasonably thereafter. These facts are not consistent with honesty and integrity. "It is essential to the validity of a contract between a fiduciary and a beneficiary concerning matters within the scope of that relationship that a full disclosure be made of all relevant facts which the fiduciary knows or should know." *Pacelli Bros. Trans. Inc. v. Pacelli*, 189 Conn. 401, 407-408, (1983). The Appellate Court decision made no reference to or review of the trial court's improper inclusion of Defendant's intent as a factor in the "knowing misappropriation" standard under Practice Book § 2-47A.

Again, although irrelevant, the facts support the assertion that the Defendant sought to deceive Yuille when he violated his fiduciary duty to inform her and to make full disclosure on two occasions: (1) when he failed to notify her that he intended to take her money from the escrow account and deposit it into his own account, and (2) when he failed to promptly notify her after he had taken her money. He concealed the misappropriation for almost a year, until he could no longer hide the fact because the division of the escrow funds was the subject of discussion at the second PAC conference. He resisted her attempts to obtain the accounting to which she was entitled, thereby concealing his misconduct even longer. Even at the presentment trial, after the Appellate Court decision holding that the fee agreement was unenforceable, the Defendant still did not see fit to rectify his error by restoring the full $363,960.97 to an escrow account pending further court action.

In the present case, the trial court should have found that Defendant knew in fact that the property did not belong to him when he took it because the trial court found that the alleged justifications for taking the funds were unreasonable, erroneous and without any support. The finding should have stopped there because the trial court found the necessary "knowing" conduct (which is not obviated by blind indifference to or willful manipulation of the law) of the fact that the money did not belong to Defendant and that he took it without permission. The court then erred when it continued in its analysis and credited instead erroneous, unreasonable and unsupported defenses raised by the Defendant and by extending its inquiry into the Defendant's integrity and intent to deceive Yuille. The extended and improper inquiry is what ultimately resulted in the factually unsupportable

finding that there was no knowing misappropriation under §2-47A. The Appellate Court adopted the trial court's error by affirming the decision that Defendant's unreasonable and erroneous belief that the funds were his to use how he saw fit was a good faith defense to a "knowing misappropriation". There is no case law to support the position that the knowing standard is obviated by unreasonable and erroneous beliefs. [7]

In fact, case law supports the opposite. In *In re Irizarry*, 141 N.J. 189, 661 A.2d 275 (1995), defendant wrote a check against insufficient funds which led to an audit of his account. Defendant sought to exculpate himself by stating that he relied on his bookkeeper and office staff. The court found that the intentional and purposeful avoidance of knowing what is going on with his trust account would not serve to protect him from what would otherwise be a knowing misappropriation. See also, *In Re Freimark*, supra 152 NJ 45 (1997) (a "[w]illfully blind Defendant who is aware of the highly probable existence of a material fact but does not satisfy himself that it does not in fact exist is as culpable as the Defendant who knowingly misappropriates.").

Although the Appellate Court herein cited a few cases to use in support of its analysis, the cited cases actually support Disciplinary Counsel's argument. A 95. In *In re Konopka*, 126 N.J. 225, 596 A.2d 733 (1991), the New Jersey Supreme Court properly applied the knowing standard when it held that extremely careless bookkeeping did not amount to knowing misappropriation of funds. In that case, the defendant could not know that he was taking funds from a client without the client's permission because his record

[7] The Respondent is an attorney of 43 years and understands what a court order means. There was never a court order allowing him to take all of the funds held in escrow nor was there a court order holding that he earned all of the funds held in escrow. In fact, the decisions held otherwise. He acted in direct contravention of the trial court and appellate court decisions as to those funds.

keeping was so abysmal he could not possibly have the requisite knowledge. However, he was suspended for six months under a similar rule to Connecticut's Rule 1.15. The present case is not merely an IOLTA account bookkeeping issue and there was no finding of a good faith defense because Defendant's actions were found to be unreasonable and erroneous and his explanations incomprehensible. In *In re Barlow*, 140 N.J. 191, 657 A.2d 522 (1989), defendant held proceeds from a real estate transaction which were to be used for miscellaneous costs. He paid himself instead and then paid the costs sometime after. The defendant in his defense stated that he did not believe his actions were a knowing misappropriation, that he had an unblemished record and that no one was injured. Nevertheless, he was found to have "knowingly" misappropriated and was disbarred under the *Wilson* analysis. Unsupportable assumptions are not a defense to the "knowing misappropriation" standard.

The Appellate Court also stated that the attorney's knowledge that the funds did not belong to him was not an issue in the cases cited by Disciplinary Counsel. In fact, "knowing" misappropriation had to be proven in all of the cases cited. In the *Wilson* case the defendant did not appear to defend himself. Accordingly, the court was free to find knowing misappropriation. In *In re Blumenstyk*, 152 N.J. 158 (1997) the attorney admitted using client funds for personal use. The court was able to find knowledge upon that admission then followed *Wilson*. In *In re Freimark*, 152 N.J.45 (1997), the attorney did not dispute that he took funds but did dispute that he took the funds "knowingly". In that case the attorney incorrectly calculated fees on gross proceeds in connection with a case as opposed to the net proceeds and he did not regularly reconcile his accounts. The court

found knowing misappropriation based upon willful blindness and the attorney was disbarred. The *Freimark* court cited *Irizarry*, supra ("willfully blind Defendant who is aware of the highly probable existence of a material fact but does not satisfy himself that it does not in fact exist, is as culpable as the Defendant who knowingly misappropriates.")(quoting *In re Skevin*, 104 N.J 476 at 486 (1986)). In the present case the trial court even noted that a single inquiry from the Defendant would have put an end to any confusion alleged by Defendant. A 33. Unreasonable, erroneous and incomprehensible conduct and testimony do not give rise to a good faith defense and should not obviate an attorney's actual conduct. To assert otherwise completely undermines the intent of the judiciary in enacting § 2-47A. The trial court's findings and the referenced cases herein clearly support Disciplinary Counsel's position that the Defendant possessed the requisite knowledge and therefore acted knowingly in misappropriating his client's funds held in trust and should have been found in violation of § 2-47A.

III. CONCLUSION:

Although the Appellate Court properly found that the knowing standard requirement of Practice Book § 2-47A relates to whether the attorney knows in fact that the property did not belong to him when it was misappropriated, it erred when it upheld the trial court's determination that that the Defendant did not engage in "knowing misappropriation" under Practice Book § 2-47A. In adding the requirement that the Defendant act intentionally with respect to the consequences of his conduct as well as knowingly with respect to the conduct itself, the trial court incorrectly applied the standard set out in Practice Book §2-

47A. The Appellate Court then incorrectly affirmed the trial court's decision. The trial court erred by not correctly applying the rule to the facts of this case. In light of the evidence adduced at trial, the Defendant's behavior, as a matter of law, constitutes a knowing misappropriation. The decision of the Appellate Court affirming the trial court's determination that the Defendant had not engaged in the "knowing misappropriation" of client funds under Practice Book Section 2-47A was erroneous. On this issue the Appellate Court's decision should be reversed and the matter remanded for a new trial or in the alternative should require a disbarment of Defendant pursuant to Practice Book §2-47A.

Respectfully submitted,
Office of Chief Disciplinary Counsel

By: _____

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NO. NNH-CV-11-	:	
OFFICE OF CHIEF DISCIPLINARY COUNSEL,	:	SUPERIOR COURT
Petitioner,	:	JUDICIAL DISTRICT OF NEW HAVEN AT NEW HAVEN
V.	:	
KOSKOFF KOSKOFF & BIEDER, PC,	:	
Respondent.	:	JUNE 30, 2011

PETITION UNDER PRACTICE BOOK SECTION 2-27(e)

In accordance with Practice Book § 2-27(e), Petitioner alleges as follows:

1. Respondent ("the Firm") is a Connecticut law firm with its principal place of business in Bridgeport, Connecticut. None of its current or former shareholders has a record of professional discipline.

2. As a result of a random audit of the Firm conducted in accordance with Practice Book §2-27(e) and SGC Rule of Procedure 13, the SGC's auditors determined the Firm had not been in compliance with certain of the requirements of Practice Book §2-27(b).

3. On being advised of such non-compliance, the Firm undertook voluntary remedial action and immediate steps to ensure its conformity with each of the requirements of Section 2-27(b).

4. No funds of the Firm's clients, or any funds of any other persons or entities, were used in any fashion by any current or former attorney of the Firm, or otherwise were at risk.

5. Based upon the forgoing, and the fact that the Firm's non-compliance is not likely to re-occur, the interests of attorney discipline have been fully met, and therefore no order of discipline is warranted against the Firm or any of its attorneys, and the undersigned Office has entered into a stipulation with the Firm providing that it will recommend to the Court that it enter Judgment dismissing this proceeding. A copy of the parties' Stipulated Judgment of Dismissal is attached to this Petition.

Date: June 30, 2011

THE PETITIONER
OFFICE OF DISCIPLINARY COUNSEL

By: _____

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NOTICE REGARDING DECISION
- PRESENTMENT -

GRIEVANCE COMPLAINT # 14-0722

THE ATTACHED DECISION IS PRESENTLY STAYED IN ACCORDANCE WITH PRACTICE BOOK §2-35.

SECTION 2-35 STATES, IN PART, AS FOLLOWS:

> **(e) ... Enforcement of the final decision ... shall be stayed for thirty days from the date of the issuance to the parties of the final decision. In the event the respondent timely submits to the statewide grievance committee a request for review of the final decision of the reviewing committee, such stay shall remain in full force and effect pursuant to Section 2-38(b).**

Note: This stay terminates upon the issuance of a final decision by the Statewide Grievance Committee.

DECISION DATE: 2/20/15

STATEWIDE GRIEVANCE COMMITTEE

Mark Gezelman
Complainant :

vs. : Grievance Complaint #14-0722

Ann Monaghan
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 February 5, 2015. The hearing addressed the record of the complaint filed on September 25, 2014, and the probable cause determination filed by the Middlesex Judicial District Grievance Panel on November 14, 2014, finding that there existed probable cause that the Respondent violated Rules 1.15(d), 8.1(1) and (2), and Rule 8.4(2) and (3) of the Rules of Professional Conduct and Practice Book §2-32(a)(1). [1]

Notice of the February 5, 2015 hearing was mailed to the Complainant, to the Respondent and to the Office of the Chief Disciplinary Counsel on January 6, 2015. Pursuant to Practice Book §2-35(d), Assistant Disciplinary Counsel Beth Baldwin pursued the matter before this reviewing committee. The Complainant appeared at the hearing and testified. The Respondent did not appear at the hearing. Three exhibits were admitted into evidence.

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

On March 22, 2012, the Complainant retained the Respondent to represent him in a personal injury action arising from an automobile accident. On August 8, 2012, GEICO General Insurance Company (hereinafter, "GEICO") sent a letter to the Complainant advising him that a check, made payable to the Complainant and the Respondent's law office in the amount of $20,000, was mailed to the Respondent in settlement of the bodily injury claim. On August 20, 2012, Progressive Casualty Insurance Company (hereinafter, "Progressive") sent a letter to the Complainant advising him that a check in the amount of $80,000 had been issued and mailed to the Respondent in full and final settlement of the Complainant's bodily injury claim. Thereafter, on August 24, 2012, the Respondent sent the Complainant a copy of the Progressive check. The check was made payable to the Complainant and the Respondent's law office. The Respondent also sent the Complainant a "Release and Trust Agreement" (hereinafter, "Release") for the Complainant to sign and return to the Respondent. The Respondent advised that she would hold the check in escrow pending receipt of the

[1] This reviewing committee noted two scrivener's errors in the Grievance Panel's probable cause determination. The probable cause findings citing Rules 1.15(d) and 8.1(1) referenced the language from Rules 1.15(e) and 8.4(1). Accordingly, we will review this matter under Rules 1.15(e) and 8.4(1).

signed Release. The Complainant signed the Release and returned it to the Respondent.

On October 1, 2013, the Respondent was indefinitely suspended from the practice of law in Connecticut pursuant to a reciprocal suspension in New York. Thereafter, in November of 2013, the Complainant met with the Respondent at her office. The Respondent advised him that the final accounting and settlement check would be sent to the Complainant shortly. The Respondent further advised that she could no longer represent the Complainant because she was closing her office as a result of her pending divorce. The Respondent did not advise the Complainant that she had been suspended in October. The Complainant never received any further communication from the Respondent. From December of 2013 to July of 2014, the Complainant and his mother repeatedly called and emailed the Respondent regarding the status of the accounting and settlement check. The Respondent did not respond to the Complainant's inquiries.

On July 23, 2014, the Complainant sent a certified letter to the Respondent at her home address. The Respondent signed the certified mail receipt on July 25, 2014. The Complainant demanded that the Respondent contact him within ten days regarding the status of his settlement funds or he would be forced to file a grievance complaint. The Respondent failed to respond to the Complainant's letter or provide the Complainant with the settlement funds or an accounting of the funds. The Complainant subsequently filed this grievance complaint on September 25, 2014.

On September 30, 2014, a certified copy of the grievance complaint was sent to the Respondent's last registered office address. The Respondent was advised to provide a response to the grievance complaint within thirty days. On October 15, 2014, the grievance complaint sent to the Respondent was returned by the Post Office marked "Return to Sender, Unable to Forward." Thereafter, on October 17, 2014, the grievance complaint was sent to the Respondent's home address by regular mail and was not returned. The Respondent did not respond to the grievance complaint.

This reviewing committee also considered the following:

On November 19, 2014, the Investigator for the Disciplinary Counsel's office sent a certified letter to the Respondent at her home address requesting, pursuant to Rule 8.1(2) of the Rules of Professional Conduct, that the Respondent provide copies of her IOLTA bank account statements, the client ledger for the Complainant, the fee agreement with the Complainant, the Complainant's settlement agreement and copies of all deposit slips and checks related to the Complainant's case within ten days. The Respondent signed the certified receipt on November 21, 2014, but did not provide the requested documents.

Notice of this hearing was sent to the Respondent's last registered office address on January 6, 2015. On January 15, 2015, the hearing notice was also mailed to the Respondent at her home address. The hearing notice sent to the Respondent's office address was returned by the Post Office on January 20, 2015 marked "Return to Sender, Not Deliverable as Addressed, Unable to Forward."

The hearing notice mailed to the Respondent's home address was not returned.

Disciplinary Counsel provided copies of the GEICO and Progressive checks from the insurance carriers. The backs of the checks are stamped "Pay to the Order of New Alliance Bank, For Deposit Only, Law Offices of Ann Monaghan, LLC, IOLTA 7000834365." The GEICO check was deposited into the Respondent's IOLTA account on August 10, 2012 and the Progressive check was deposited into the Respondent's IOLTA account on August 24, 2012.

The Respondent last filed the annual attorney registration with the Statewide Grievance Committee on January 3, 2013. The Respondent's disciplinary history indicates that she has been ordered presented to the Superior Court in connection with two prior grievance complaints. In the presentment arising from Grievance Complaint #10-0824, Nicola v. Monaghan, the Respondent was ordered to attend a continuing legal education (hereinafter, "CLE") course in legal ethics and comply with a random audit of her IOLTA account that had been started by the Statewide Grievance Committee. In the presentment arising from Grievance Complaint #12-0215, Taylor v. Monaghan, the Respondent was ordered to attend a CLE course in bankruptcy.

This reviewing committee concludes by clear and convincing evidence that the Respondent engaged in unethical conduct. The record before this reviewing committee indicates that in August of 2012 the Respondent received $100,000 in settlement of the Complainant's personal injury action and deposited those funds into her IOLTA account. The Respondent, however, never provided the Complainant with any of these funds or an accounting of the funds, in violation of Rule 1.15(e) of the Rules of Professional Conduct. We further conclude that the Respondent converted the Complainant's settlement proceeds and that this conduct constitutes a criminal act that reflects adversely on the Respondent's honesty, trustworthiness and fitness as a lawyer, in violation of Rule 8.4(2) of the Rules of Professional Conduct and constitutes dishonesty, fraud, deceit and misrepresentation, in violation of Rule 8.4(3) of the Rules of Professional Conduct. This reviewing committee finds that the Respondent's failure to respond to the grievance complaint constitutes a violation of Rules 8.1(2) and 8.4(1) of the Rules of Professional Conduct and Practice Book§2-32(a)(1).

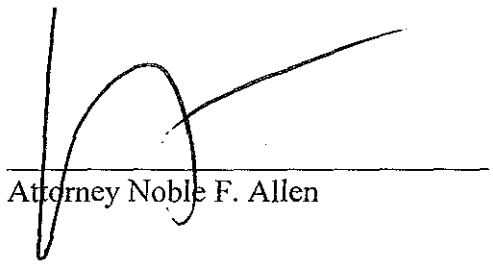
In addition to the Rules and Practice Book provision charged by the grievance panel, this reviewing committee concludes by clear and convincing evidence that the Respondent's conduct also violates Rules 1.4(a)(3) and (4), 5.5(b)(2) and 8.1(2) of the Rules of Professional conduct and Practice Book §2-27(d). We find that the Respondent's failure to respond to the Complainant's telephone calls, emails and letters regarding the status of the settlement proceeds constitutes a violation of Rule 1.4(a)(3) and (4) of the Rules of Professional Conduct. In addition, we find that the Respondent engaged in the unauthorized practice of law by meeting with the Complainant to discuss his case in November of 2013, after being suspended from the practice of law in Connecticut, in violation of Rule 5.5(b)(2) of the Rules of Professional Conduct. Lastly, this reviewing committee concludes that the Respondent's failure to respond to Disciplinary Counsel's November 19, 2014

letter requesting additional documents constitutes an additional violation of Rule 8.1(2) of the Rules of Professional Conduct and that the Respondent's failure to comply with the annual attorney registration requirements constitutes a violation of Practice Book§2-27(d).

This reviewing committee concludes that the Respondent's violations of Rules 1.15(e), 8.1(2) and 8.4(1), (2) and (3) of the Rules of Professional Conduct and Practice Book §2-32(a)(1) warrant a presentment, especially in light of the Respondent's disciplinary history, failure to answer the grievance complaint and failure to appear at the hearing before this reviewing committee. Accordingly, we direct Disciplinary Counsel to file a presentment against the Respondent in the Superior Court for the imposition of whatever discipline the court may deem appropriate. Since the presentment will be a trial de novo, we further direct Disciplinary Counsel to include the additional violations of Rules 1.4(a)(3) and (4), 5.5(b)(2) and 8.1(2) of the Rules of Professional Conduct and Practice Book §2-27(d) as found by this reviewing committee.

DECISION DATE: 2/20/15

Attorney Tracie L. Molinaro



Attorney Noble F. Allen

Mr. Jonathan Shugarts

MMX-CV 15-	:	**M63**
DISCIPLINARY COUNSEL	:	**SUPERIOR COURT**
V.	:	**JD OF MIDDLETOWN**
ANN MONAGHAN	:	**MAY 20, 2015**

PRESENTMENT OF ATTORNEY

To the Superior Court within and for the Judicial District of Middletown, now in session, comes now the Disciplinary Counsel, duly appointed and qualified and acting in accordance with the powers vested in said office by Practice Book and complains to said court that Ann Monaghan, juris no. 409704, has committed misconduct and says:

FIRST COUNT- (Mark Gezelman v. Ann Monaghan, grievance complaint #14-0722)

1. Ann Monaghan (hereinafter Respondent), juris no. 409704 was admitted as a member of the bar of the State of Connecticut on November 17, 1994 and is currently under suspension.

2. The Respondent has a history of discipline in Connecticut: MMX CV11 6005172 S suspension ordered on October 1, 2013; GC#10-0824 ordered to attend CLE by Court; ordered to complete audit by Court; GC#11-0935 ordered to complete fee dispute program by Court; GC#12-0215 ordered to attend CLE by Court.

3. Mark Gezelman, the complainant, filed a grievance complaint against the Respondent, Ann Monaghan, dated September 25, 2014, grievance #14-0722 Gezelman v. Monaghan.

4. On March 22, 2012, Mark Gezelman hired the Respondent, Ann Monaghan, to represent him in a personal injury action.

5. On August 8, 2012, GEICO General Insurance Company sent a letter to the complainant advising him that a settlement check for bodily injury made out to the complainant and the Respondent's law firm in the amount of $20,000.00 was mailed to the Respondent, Ann Monaghan.

6. On August 20, 2012, Progressive Casualty Insurance Company sent a letter to the Complainant advising him that a check in the amount of $80,000.00 had been issued and mailed to the Respondent in full and final settlement of the complainant's bodily injury claim.

7. On August 24, 2012 the Respondent sent the complainant a copy of the progressive check.

8. The check was made payable to both the complainant and the Respondent's law firm.

9. The Respondent sent the complainant a release and trust agreement for the complainant to sign and send back to the Respondent.

10. The Respondent told the complainant she would hold the check in escrow pending receipt of the signed release.

11. The complainant signed and returned the release to the Respondent.

12. On October 1, 2013 the Respondent was indefinitely suspended from the practice of law in Connecticut, docket no. MMX CV11 6005172 S.

13. In November 2013, the complainant met with the Respondent at her office regarding the final accounting for his personal injury settlement, hereinafter referred to as "the November 2013 meeting". The Respondent did not inform the complainant that her license to practice law was suspended.

14. At the November 2013 meeting, the Respondent advised the complainant that a settlement check would be sent to him shortly.

15. The complainant never received a settlement check.

16. The complainant never received an accounting of his personal injury settlement.

17. The Respondent did not respond to the complainant's numerous requests for information and status on his settlement proceeds after the November 2013 meeting.

18. On July 23, 2014, the complainant sent a certified letter to the Respondent at her home address demanding his settlement funds and her to contact him.

19. The certified letter was delivered to and signed by the Respondent on July 25, 2014.

20. The Respondent did not respond to the certified letter.

21. The Respondent did not respond to the grievance complaint.

22. The Respondent did not appear at the grievance hearing.

23. On November 19, 2014, the Investigator for the Office of Chief Disciplinary Counsel sent a certified letter to the Respondent to her home address requesting documents and information pursuant to Rule 8.1(2) of the Rules of Professional Conduct.

24. The Respondent did not respond to the November 19, 2014 letter.

25. The back of both the GEICO and Progressive settlement checks from the insurance companies were stamped on the back with "Pay to the Order of New Alliance Bank, For Deposit Only, Law Offices of Ann Monaghan, LLC, IOLTA *4365".

26. The GEICO check was deposited into the New Alliance Bank account ending in*4365 on August 10, 2012; that account belonged to the Law Offices of Ann Monaghan.

27. The Progressive check was deposited into the New Alliance Bank account ending in*4365 on August 24, 2012; that account belonged to the Law Offices of Ann Monaghan.

28. The Respondent last filed the annual attorney registration with the Statewide Grievance Committee on January 3, 2013.

29. After a full hearing, the Reviewing Committee ordered on February 20, 2015 that the Respondent be presented to the Superior Court.

30. The Reviewing Committee found by clear and convincing evidence that the Respondent committed unethical conduct and violated Rules 1.4(a)(3); 1.4(a)(4); 1.15(e); 5.5(b)(2); 8.1(2) 8.4(1); 8.4(2); 8.4(3); of the Rules of Professional Conduct and Practice Book §2-27(d) and §2-32(a)(1).

31. The Respondent committed professional misconduct, including but not limited to, violations of Rules 1.4(a)(3); 1.4(a)(4); 1.15(e); 5.5(b)(2); 8.1(2) 8.4(1); 8.4(2); 8.4(3); of the Rules of Professional Conduct and Practice Book §2-27(d) and §2-32(a)(1), in one or more of the following ways:

a. The Respondent failed to provide the complainant an accounting as to his personal injury settlement proceeds;

b. The Respondent failed to provide the complainant any of his personal injury settlement proceeds;

c. The Respondent converted the complainant's settlement proceeds constituting a criminal act which reflects adversely on the Respondent's honesty, trustworthiness and fitness as a lawyer;

d. The Respondent converted the complainant's settlement proceeds constituting a criminal act which constitutes dishonesty, fraud, deceit and misrepresentation;

e. The Respondent failed to respond to the grievance complaint;

f. The Respondent failed to respond to the complainant's request for information and status on his settlement proceeds;

g. The Respondent engaged in the unauthorized practice of law at the November 2013 meeting with the complainant after having her Connecticut license suspended;

h. The Respondent failed to respond to the November 19, 2014 letter and request for information sent by the Investigator of the Office of Chief Disciplinary Counsel;

i. The Respondent failed to comply with the annual attorney registration requirements of Practice Book §2-27(d);

WHEREFORE, for the Petitioner prays that the court set this matter down for a trial on the merits within 60 days as required by Practice Book §2-47, and impose such appropriate discipline as is allowed by law, an order of costs and expenses pursuant to Practice Book §2-51, and order any other relief provided by law and the rules of court.

Respectfully submitted,
Office of Chief Disciplinary Counsel

By: _____

Beth L. Baldwin
Office of Chief Disciplinary Counsel
Juris No. 422382
100 Washington Street
Hartford, Connecticut 06106
phone (860) 706-5057
Fax (860) 706-5063

From: Barbara Larocca </O=KOSKOFF/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=BFBARBIERO>
Sent: Wednesday, February 15, 2012 1:55 PM
To: Kathleen Nastri <KNastri@KOSKOFF.com>
Subject: RE: D'attilo

[redacted]

From: Kathleen Nastri
Sent: Wednesday, February 15, 2012 1:46 PM
To: Barbara Larocca
Subject: RE: D'attilo

OK - thanks.

From: Barbara Larocca
Sent: Wednesday, February 15, 2012 1:42 PM
To: Kathleen Nastri
Subject: RE: D'attilo

Yes. Before I sent the email, I showed Jim yesterday what I was sending. The only thing he didn't want to send was the authorization us to accept the $25M by the D'attilos. But that letter (statement) was at the top of the Settlement Statement which was sent to the Probate Court, which Coleen already has.

From: Kathleen Nastri
Sent: Wednesday, February 15, 2012 1:32 PM
To: Barbara Larocca
Subject: RE: D'attilo

did you ask Bill or Jim before you sent the retainer? I think they both had some concerns, but recognized we would need to send it.

From: Barbara Larocca
Sent: Wednesday, February 15, 2012 10:58 AM
To: bgallant@daypitney.com
Cc: Kathleen Nastri; James Horwitz
Subject: FW: D'attilo

Dear Brad: Below is the email I sent to Colleen Fries.

From: Barbara Larocca
Sent: Wednesday, February 15, 2012 10:55 AM

ConnecticutLawTribune

NOT FOR REPRINT

Law Firm Says It Was Justified in Keeping 28 Percent of Med-Mal Settlement

Koskoff says it made contingency fee clear to disabled boy's parents

Thomas Scheffey, The Connecticut Law Tribune

February 2, 2015

New details have emerged in a legal malpractice case brought by a brain-damaged boy and his parents who are suing two respected Connecticut law firms for allegedly defrauding them of millions of dollars.

The D'Attilo family claims that lawyers at Koskoff Koskoff & Bieder in Bridgeport and Day Pitney in New Haven engineered a complex scheme to take an extra $4.3 million in legal fees in 2012 that were not legally allowed under state statute or any signed retainer agreement.

In an interview, Michael Koskoff, the firm's senior partner, disputed the allegations of Domenic and Cathy D'Attilo, who claim that they were legally obligated to pay a contingency fee of less than 11 percent on a settlement of $25 million, and that a 28 percent fee was unjustified.

"This is a baseless claim," Koskoff said. "They knew the fee was 28 percent [of the total award] all along; they knew it was going to be 28 percent when they agreed to the settlement. There were settlement offers made, which they agreed to, based on a 28 percent fee. They signed documents for the probate court agreeing the fee was going to be 28 percent. They never had any objection at any point."

Koskoff continued: "For them to make their first objection to the fee, two years after the settlement, in the form of this lawsuit is outrageous."

On March 21, 2003, the D'Attilos' signed a retainer agreement with the firm. It lists a statutory formula for legal fees that works out to less than 11 percent of the total award. However, it does provide for a 28 percent fee if the state's contingency fee statute "is not in effect at the time the money is to be distributed to the client." The plaintiffs say there has been no change to the statute.

But Koskoff said it is highly unusual for Connecticut personal injury lawyers to enter into agreements to pursue complex contingent fee litigation without obtaining a waiver of the statutory limits. He estimated that in 90 percent of complex personal injury cases, plaintiffs waive the statutory formula and agree to a higher amount. If the client waives the statutory

formula, Koskoff said, the legislature allows fees up to one-third of the entire recovery.

Defense lawyers for Koskoff and Day Pitney are attempting to move the case into binding arbitration, citing a clause in the retainer agreement that calls for arbitration in the event of a fee dispute. There have recently been a flurry of filings in the case.

On Jan. 28, the D'Attilos' legal malpractice lawyer, Howard A. Altschuler, of Bethany, filed 175 pages of legal documents, email transcripts and potential court exhibits in support of the 16-count civil complaint in New Haven Superior Court. The documents attempt to support the D'Attilos' allegations of scheming and "judge shopping" maneuvers to dupe the probate courts.

The case began with a huge win for the D'Attilo family. In May 2011, a Waterbury jury awarded the family $58.6 million, which is believed to be the largest medical malpractice verdict in state history. The lawsuit stemmed from allegations that an obstetrician didn't react properly to signs of a baby's distress during the birth process and, as a result of a delay in calling for a cesarean section, the child—now 11—ended up with brain damage that leaves him unable to walk, talk or feed himself.

The plaintiffs' lawyers were Koskoff partners Kathleen Nastri and James Horowitz. Nastri is a former president of the Connecticut Trial Lawyers Association. Because she made a $4 million offer of compromise before trial, the defendants faced more than $100 million in exposure, with prejudgment interest mounting.

On Jan. 11, 2012, Michael Koskoff called the D'Attilos, breaking the news that the insurers had made a $25 million offer. Relieved, the family signed a settlement document that does, in fact, list a 28 percent contingency fee for the firm—or $7 million. But the family maintains that because they had an existing fee agreement, they had no reason to think that the amount had changed and thus had no knowledge of the 28 percent figure when they signed the settlement document.

The family maintains the original 2003 retainer agreement should be in force. It allows a one-third contingency for the first $300,000 recovered, dropping to 25 percent for the next $300,000, and so on until all amounts more than $1.2 million have a 10 percent contingency fee. For a $25 million award, the fee is 10.64 percent, or $2.66 million.

"Exhibit 1" in the D'Attilos' amended complaint is an unsigned and undated draft KK&B retainer agreement. It would have charged a 33.33 percent contingency fee, and has a waiver clause agreeing to higher fees "in view of the complex nature of the case, the expense involved" and the expertise of KK&B. The unsigned document was apparently included in court documents in an attempt to show that the D'Attilos had knowledge that they could waive the standard fee agreement and chose not to.

A few days after the settlement agreement was signed, KK&B paid itself $7 million in fees and more than $1 million in cost reimbursements.

In an interview, Altschuler said there is no way that the D'Attilos' signing of the settlement form should have changed the terms of the initial retainer agreement. "The settlement accounting form wasn't listed as an amendment or an agreement," he said. "It doesn't have the waiver language required by statute to charge a higher contingent fee. Bottom line, it is not a contract."

To amend a fee agreement, the state statute requires written disclosure of the legislature's fee limits and an express waiver of that schedule. "There are a whole host of statutory protections"

DOCKET NO. CV-14-6051836-S	:	SUPERIOR COURT
CATHY M. D'ATTILO, ET AL.	:	JUDICIAL DISTRICT OF NEW HAVEN
V.	:	AT NEW HAVEN
KOSKOFF, KOSKOFF & BIEDER, ET AL.	:	APRIL 20, 2015

RULING ON DEFENDANTS' MOTIONS FOR APPOINTMENT OF AN ARBITRATOR (NOS. 134 & 139)

Each set of defendants' motions for appointment of an arbitrator are denied. As stated by this court in its earlier ruling granting the defendants' motions to stay this action, "[a] § 52-409 order does not *compel* arbitration; rather, it merely stays the pending civil action until arbitration has been completed." (Emphasis in original; internal quotation marks omitted.) *D'Attilo* v. *Koskoff, Koskoff & Bieder*, Superior Court, judicial district of New Haven, Docket No. CV-14-6051836-S (March 26, 2015, *Frechette, J.*) quoting *Success Centers, Inc.* v. *Huntington Learning Centers, Inc.*, 223 Conn. 761, 767 n.9, 613 A.2d 1320 (1992). While the defendants quote subsections (a) and (b) of General Statutes § 52-411 in their brief, they omit the critical third subsection (c). Subsection (c) provides the following: "An application under this section and proceedings thereon *shall conform to the application and proceedings provided for in section 52-410*, except that such changes shall be made in the complaint as may be necessary to correctly and concisely state the plaintiff's claim." (Emphasis added.)

This omission is material in that "[t]he trial court's authority under § 52-410 is quite different from its authority under § 52-409. Section 52-410 *creates an independent action that can be instituted only by a properly served writ of summons and complaint.*" (Emphasis added.)

Judicial District of New Haven
SUPERIOR COURT
FILED
APR 20 2015
CHIEF CLERK'S OFFICE

Judgment entered 20
Counsel/self-rep. ind. notified 4/20 2015
By ☐ JDNO ☑ copy of memo ☐ other
☑ Copy to Reporter of Judicial Decisions

Success Centers, Inc. v. *Huntington Learning Centers, Inc.*, supra, 223 Conn. 768. Our Supreme Court noted in *Success Centers, Inc.*, that the defendant's request for a § 52-410 order compelling arbitration in that civil action was "procedurally defective." Id., 764 n. 5. So too in the case at bar, the defendants' motions to appoint an arbitrator in this civil action are also "procedurally defective." (See also, *Thompson* v. *Mendoza,* Superior Court, judicial district of Ansonia-Milford at Milford, Docket No. CV-05-4005125-S (December 29, 2005, *Ronan, J.T.R.*), where the court held that is was improper, in a civil action, for a party to combine a § 52-409 motion to stay with a "motion to compel" arbitration made pursuant to §52-410. The court held that the moving party was required under *Success Centers, Inc.*, to bring a separate application pursuant to § 52-410. In denying the motion to compel arbitration, the court held that "§ 52-410 requires [a] party to institute [a] distinct legal action by separate writ of summons and complaint." Id. The court concluded that the "request for [a] § 52-410 order was procedurally defective because no application by writ of summons and complaint was made." Id.)

Accordingly, the defendants' motions for appointment of an arbitrator are denied.

Frechette

Frechette, J. 4-20-15

NO: #15-0137	:	SUPERIOR COURT
CATHY D'ATTILO	:	JUDICIAL DISTRICT OF HARTFORD
v.	:	AT HARTFORD, CONNECTICUT
KATHLEEN NASTRI	:	FEBRUARY 4, 2016

B E F O R E :

THE REVIEWING COMMITTEE

ATTORNEY TRACIE MOLINARO
ATTORNEY SUE A. COUSINEAU
JONATHAN SHUGARTS

A P P E A R A N C E S :

Representing the Statewide Grievance Committee:
ATTORNEY CATHY A. DOWD
Assistant Bar Counsel
287 Main Street
East Hartford, Connecticut 06118

Representing the Chief Disciplinary Counsel's Office:
ATTORNEY KARYL L. CARRASQUILLA
Assistant Disciplinary Counsel
100 Washington Street
Hartford, Connecticut 06106

Representing the Respondent:
ATTORNEY ANTHONY NUZZO, JR.
Nuzzo & Roberts, LLC
One Town Center
Cheshire, Connecticut 06410

Representing the Complainants:
ATTORNEY HOWARD ALTSCHULER
Law Office of Howard Altschuler
21 Perkins Road
Bethany, Connecticut 06524

Recorded and Transcribed By:
Kari Watford
Court Recording Monitor
101 Lafayette Street
Hartford, Connecticut 06106

ATTY. DOWD: We'll take the Nastri matter. Okay. This is the hearing in connection with Grievance Complaint number 15-0137, *Cathy and Dominic D'Attilo versus Kathleen Nastri.*

This hearing is being conducted by a reviewing committee of the Statewide Grievance Committee. I'm Attorney Cathy Dowd. I'm counsel to the committee.

The committee consists of Attorney Tracie Molinaro, Attorney Sue Cousineau and Mr. Jonathan Shugarts.

At this point, I'd like to have the parties identify themselves for the record, please.

ATTY. CARRASQUILLA: Good morning. Karyl Carrasquilla, Assistant -- Chief Disciplinary Counsel and seated to my right are the complainants in the matter, Mr. and Mrs. D'Attilo and their counsel, Howard Altschuler.

ATTY. DOWD: Thank you.

ATTY. NUZZO: Good morning. My name is Anthony Nuzzo. I represent Attorney Kathleen Nastri. Kathleen Nastri is right next to me.

ATTY. DOWD: Thank you. Attorney Nastri, if you could just stand and raise your right hand. I know we have an agreement but in

case the committee has questions.

(The oath was administered to Attorney Nastri.)

ATTORNEY NASTRI: I do.

ATTY. DOWD: Thank you. Since we do have an agreement, the parties will be able to put that agreement on the record.

The reviewing committee may illicit testimony or other evidence on any relevant issues and may allow argument as to the disposition and shall give the complainant the opportunity to comment on the agreement.

The complainant filed this grievance complaint against the respondent on February 27, 2015.

On July 20, 2015, the Fairfield Judicial District Grievance Panel filed this probable cause determination finding probable cause that the respondent violated Rule 1.6 and 1.15c of the Rules of Professional Conduct. Attorney Carrasquilla?

ATTY. CARRASQUILLA: Thank you. We do have a proposed disposition pursuant to Practice Book section 282b to offer to the committee today.

By way of background of the underlying matter, this case arose from a medical

malpractice case. The D'Attilo's son was born with grave, grave health issues.

They retain the Koskoff Law Firm and the respondent as counsel for medical malpractice suit; that was in 2003.

In 2009, the case was tried to a jury, and it resulted in a hung jury. In 2011, there was the second trial of the medical malpractice matter, and it resulted in a plaintiff's verdict to the D'Attilo's in excess of $58 million.

Following the verdict, the matter was appealed by the defendant in the matter. Mediation ensued, and in January of 2012, there was a settlement agreement between the parties for approximately -- I think it was $25 million.

Procedurally, here in the grievance before the committee, we have a probable cause finding of a violation of Rule 1.6, which is confidentiality of information and 1.15c, which regards safekeeping property.

Pursuant to the agreement that we've offered the committee, my opinion is both of those rule violations do not apply to the facts of this case, neither the confidentiality of information of the

safekeeping property.

The probable cause letter is less than clear as to what conduct constituted the finding for those -- those rule violations. It seems to be a reference by panel counsel to -- in paragraph 21 of the probable cause letter it states that because of the unresolved issues concerning the legal fees, it seems like he found that there was a conflict of interest there. But then we don't see any finding of any conflict of interest. So, to say the least, the probable cause finding is very confusing.

We proceeded pursuant to the agreement under Rule 1.15e. Following my investigation of the matter, my discussions with respondent's counsel, my discussions with the complainant's counsel and the reviewing of all of the documents -- a very document-intensive case, the representation spanned a period of nine years. So there's a lot of materials.

The complaint makes allegations against many attorneys, not only Attorney Nastri. However, this grievance is limited to Attorney Nastri and her conduct.

So pursuant to our agreement, Attorney

Nastri admits that she did not comply with the Rule 1.15e of the Rules of Professional Conduct by not rendering a full accounting to the complainants due to the fact that her law firm did not retain invoices for expenses that it paid during the course of the representation.

I've had much discussion with respondent's counsel regarding the record keeping at the firm during that time period. I've been told and I've been provided documents that indicate that the record keeping has changed since that time period. The matter -- the issue has been addressed internally by the firm.

And pursuant to our agreement, Attorney Nastri admits that she did violate Rule 1.15e -- I'm sorry -- yeah, 1.15e. The recommendation is that Attorney Nastri be reprimanded. Attorney Nastri has no disciplinary history. She's been practicing for approximately just under 30 years.

And to put into the context the rationale behind the recommendation, why I feel it's a fair and reasonable resolution of the matter, the Rules of Professional Conduct provide a framework for the ethical practice of law.

When properly applied, they serve to define the relationship between lawyer and our legal system. And that's found in the preamble to the Rules of Professional Conduct.

In the scope section, prior to the Rules of Professional Conduct, it states that these rules are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself.

The rules are not designed to be a basis for civil liability. The purpose of the rules can be subverted when they are invoked by opposing parties as procedural weapons.

In this case, the D'Attilos do have pending litigation against Attorney Nastri and others, other named defendants. That litigation is pending in New Haven Superior Court. That litigation alleges the same allegations regarding fees here in this grievance complaint. So the complainants in this matter are pursuing their remedies in the civil arena, which is appropriate.

To raise the issues of disgorgement of the fees now, it puts the Statewide Grievance Committee squarely in the middle of a fee dispute, a matter which has been pending, and

as I've said, is being addressed by the Superior Court in New Haven.

I believe that at this point the parties have been ordered to do arbitration in that matter. I think that is -- kind of where -- what the status is in that -- in that case.

By declining to recommend or request of the Statewide Grievance Committee disgorgement of the fees, it's also placing Disciplinary Counsel in the middle of a fee dispute, where there's a fee dispute between the complainants and the respondent.

For all of those reasons, I feel that a reprimand to Attorney Nastri is the appropriate sanction. A reprimand is, as we know, forever on an attorney's record. She's been practicing for, like I said, almost 30 years without any incidents, without any disciplinary history. This will be on her history from now until forever.

I think it's an appropriate sanction. I think the issues regarding the safekeeping of property and the issues regarding the expenses in this matter have been addressed. I don't -- I don't doubt that it will not happen again.

The safeguards put in place by the Koskoff

Law Firm, in my opinion, address those issues that existed in 2012 time period, when the case settled.

So my recommendation and request would be that the Statewide Grievance Committee approve the proposed disposition.

The complainants do not agree with the recommendation, and they do wish to be heard.

ATTY. MOLINARO: Attorney Nuzzo?

ATTY. NUZZO: Yes. First of all, thank you for your attention in this matter. I want you to know in the first instance that we take this very seriously. We don't think this a sweetheart deal or anything like that whatsoever.

I know if -- I've been practicing law for going on 48 years, and if I had a reprimand on my record after 48 years, I would not feel that that was something that was simply nothing. It is something.

But notwithstanding that, I think it's important that you understand that we're going to do our best to tell you what happened here.

The reason I think that's important is because you have to determine whether this is a fair deal as regards to your role as a

reviewing committee. If I was sitting in your seats, I would want to know whether this is an appropriate resolution of my client's grievance complaint.

And I think, as a starting point, I would say that -- well, look at what we're agreeing to. What we're agreeing to is record keeping. What happened in this case you can imagine.

This case was tried over nine years, two complete jury trials in a medical malpractice case, two verdicts. The files were enormous; experts, depositions, transcripts, all kinds of things belonged to that process.

The D'Attilos came in 2003, but the Koskoff Firm put in place in 2000 a procedure whereby they scanned in their entire file rather than keep it in banker boxes for seven years.

So they were aware of the rules back then in 2000 --

ATTY. COUSINEAU: Sir, could you have a seat, please?

A VOICE: I was having trouble hearing.

ATTY. COUSINEAU: Okay. Well, you can --

ATTY. MOLINARO: You can move up or --

ATTY. COUSINEAU: Move up if you want,

but --

A VOICE: I can sit over there. I mean I was as close as --

ATTY. COUSINEAU: Maybe -- I was -- I --

A VOICE: Okay. It's all right.

ATTY. COUSINEAU: -- I don't think you should be standing. I apologize.

A VOICE: I was just trying to hear. So sorry.

ATTY. NUZZO: Okay. The Koskoff Firm put in place in the year 2000 a -- a document retrieval system whereby they scanned in 100 percent of their file and kept them in accordance with professional rules back then. This was before the -- the -- this case even came into the office.

And what happened after that is that the filed stayed in the boxes, including all the records, the invoices, whatever accounting information was available. And -- and then, finally, it was resolved in -- in May of 2012.

At that time, the local work group of this -- Attorney Nastri had the obligation of, basically, getting this material scanned in. And through some clerical error they, basically, didn't scan in the invoices that

they collected over the period of time.

Now, so you understand that, the Koskoff Firm had the paper invoices, but they also had an electronic version of that invoice. What happens is if a bill came in 2003, as an example, they wouldn't just say throw it in the file, they'd put in an electronic version of that. So they would keep a record. And when they paid it, they would log in there, from 2003 through 2012.

That -- that is one of the documents that we submitted in -- in the underlying grievance complaint. And it's here, and it hasn't been marked. It's Q, but it's not an exhibit in this case. But it -- the reason I put it in here is so you didn't have to go dig through the -- the whole pile of the -- the response.

But, basically, that is a printout of a document, which was created in the ordinary course of business. So what was happening is they're recording all the information as it's happening from 2003 forward. And they're paying the bills.

And under the fee agreement, the way it worked is is that the Koskoff firm, like most plaintiff firms, what they do is they advance

out of their own funds, not client's money. They pay their own fees.

And they provide a re-fee agreement, as in this fee agreement, that if in fact the bill if in fact was already covered the jury comes back and says no we're not giving you a dime, they have to absorb all of those costs. So it's not something where the D'Attilos had paid a dime towards any of those. Those are fees -- those are costs that were expended over that period of time.

But notwithstanding that, they still have this rule, the rule which basically provides you have to keep the invoices.

So the first time we knew about it was when Attorney Altschuler asked for an accounting, this was in -- I think it was in -- I'm doing this from memory now, sometime around December of 2014. When before suit, he wanted to see the record. He wanted to see it because on the -- on the settlement statement, the bills totaled, at that time -- at that moment in time, the settlement statement in May of 2012, it totaled $635,000. That was two trials over a nine-year span.

So -- so we -- when we went back to the

Koskoff Firm and said, okay, give us the bills, give us the records, see what we have. And we find out at that time that the invoices -- there's a few invoices, not a lot, but there's a few invoices where the -- the actual hard paper copy is not there.

So what we did immediately is we sent Attorney Altschuler that -- that computer printout in December of 2014. We said this is what we have so far. We're looking for the invoices. And we really were looking for the invoices. It wasn't like magical. It was -- it was truthful.

And we actually went out, and we were looking for the invoices. And we came to the conclusion the invoices were not saved, and we determine, at that time, that there was a clerical error when they scanned in the whole documents.

So what we decided to do internally is our controller, who basically is an accountant, she wasn't on -- on this record when it was destroyed, when the documents were destroyed. She, basically, went back and pulled together every single check that was paid out in that $635,000 over nine years, and -- and she compiled a spreadsheet outlining every single

check.

And this is -- this is the -- this is what we gave to Attorney Altschuler in -- in May of 2000 -- May of 2015. So -- and the reason we didn't give it to him immediately, obviously, is we didn't have it immediately.

So we, basically -- basically what we did here is we went back and, basically, put that information together.

Now, some of those checks that were in there were what I would call a bulk check because some of these vendors, like say a court reporter, we paid for multiple trials. But they isolated the -- the controller isolated, per check, how much was allocated and charged to the Koskoff account in the D'Attilo case.

So we gave this all to Mr. Altschuler back in May of 2015. We thought that was fine, but then he -- you know, he was, basically, not in agreement thinking that somehow we're trying to trick him or trick his clients into believing that we had some kind of nefarious deal to, basically, hide what we were doing, which we were not doing.

So what we did after that is we hired a forensic accountant. It was an outside

accountant who is a former Internal Revenue Service agent who -- who, basically, specialized in fraud when he was an agent, a fraud agent for the Internal Revenue Service.

And we had him go through all the records to verify that what we were putting to together was -- was genuine. So we had a third-party set of eyes looking at this thing. We submitted that here as exhibit G, but it's only marked for identification at this point. I think it is relevant for these proceedings to show the good-faith effort that we were trying to do to put this in. And I would like it to be a full exhibit, unless you have an objection.

ATTY. CARRASQUILLA: I do have an objection to exhibit G. As I indicated to bar counsel when it was proposed a few days ago, that's a January 22nd report by a purported export.

I'm objecting to it based on hearsay. The actual persons who actually did the billing and everything in the office, I am assuming are available to -- to testify regarding the actual records keeping, record billing process.

I think that the proposed purpose of the

expert is within the province of the Statewide Grievance Committee to determine if the practices were in compliance with the Rules of Professional Conduct.

And the use of experts in attorney disciplinary matters that go to whether or not a rule violation occurred is not something that the Statewide Grievance Committee accepts and does. It's generally not allowed in attorney disciplinary matters because those issues, again, are the sole province of the Statewide Grievance Committee and the purpose for the hearing.

The -- so for those reasons, I do object to exhibit G.

ATTY. MOLINARO: We're gonna sustain the objection.

ATTY. NUZZO: Well, now seeing the fact it's not here, at some point it will come up, perhaps in the civil case or in the -- or -- or -- in this case it may not be your hearing, but notwithstanding that we do appreciate your at least thinking about the process.

But orally I can say to you that the expert in a trial of this case would testify and be allowed to testify in the trial of

this case based on information you see from others. That's what experts do, and they would verify that -- that all the information that we provided to Mr. Altschuler was accurate and that there was no -- nothing -- nothing inappropriate about -- about that.

But notwithstanding the fact that we did go through that process and we did put all that information on -- on the table, I want you to understand also that, although there's a complaint now that, perhaps, there's something wrong here, when Mr. Altschuler testified before -- not testified, when he spoke before Judge Frechette in his motion to stay, he said, I don't question that the bill -- the bills that are out there, they're excessive. I'm just questioning whether or not they were -- can be documented.

Well, we documented, at least to the extent we could in evidence, we -- we at least documented the fact that we had the checks. We had the computerized printout, and we also, basically, have given other detail in there besides that. And we gave all this information to Mr. Altschuler, to Attorney Carrasquilla. We also offered, just so you know, prior to this in the

investigation, we offered to have the controller come in and explain all this to Attorney Carrasquilla to show her exactly how she got to the point that she did.

So -- so with reference to the record keeping, there's no question that the firm did not comply with rule one -- it's actually -- it's -- it's a subset of Rule 1.5 -- 1.15. He -- they -- they don't refer to invoice in ruling. They refer to it as bills, and they didn't keep the bills, as I've indicated.

But notwithstanding that, a lawyer would have responsibility for what their staff are doing. In this case, Ms. -- Attorney Nastri is -- is taking responsibility in this particular matter.

Now, as to the -- as to the other points that I think that may be of interest is -- to the panel in deciding whether this is a fair disposition is the fee agreement, and I think that it's important to understand how it interplays with the Rules of Professional Conduct.

With reference to the fee agreement, I could stand up here and say, which is truthful, that when the fee agreement was created in March of 2003, Attorney Nastri was

not employed by the firm.

And the -- the law is clear in ethics -- in the ethics world that when you're looking at a fee agreement, you're looking at -- at the time that the agreement was made, which would be rules in 2003 not 2016.

And notwithstanding that I think what we can talk about is if she was there, because I think it's important for you to understand as you interplay between the civil case and this case the difference that may -- may apply to us versus apply in the civil world.

And in terms of this fee agreement back in 2003, what the rule provides under 1.5 -- it didn't have the preamble in the front saying a lawyer must not charge or collect a reasonable fee. It doesn't start that way. And I can -- I -- I have a copy here somewhere of the rule, and I could submit it if you'd like. Or you can pull it up, but it goes on to say -- it goes on to say that the request must be reasonable and lists all the characteristics of its reasonableness, such as the time of task, the expertise, what's involved.

And then it goes on to say in reference to a contingency fee agreement, it must be in

writing, as -- as our current rule says. It must be in writing. You can't have a contingency fee on a personal injury case unless it's in writing then and now. Back then, though, it was not required to be signed.

Probably the biggest distinction between the 2003 rule and this rule was in 2003, the fee agreement did not require the terms of engagement to be included in the fee document. And that's -- that's relevant to these proceedings because back then it said, as an example, in the commentary that you could have -- just give -- give a client a printed copy of your fee schedule, and -- and that would be sufficient to comply with the rule. So it was -- was much more flexible back then.

But notwithstanding the fact that it shouldn't apply to Attorney Nastri, because she wasn't part of that, you still have to communicate the fee to the client no matter what it is, in writing, not in writing. You have to sit down with the client and explain what the fee is. You can't, basically, just stand up there and say the fee is what it is; take it or leave it.

So in this particular case, the fee agreement was created, and I'll tell you about how it was created. It was created back in 2003. And it was -- and then she -- and at that time, Attorney Nastri was not involved in this case. Although Attorney Carasquilla talked about the fact that she was assigned this case, she wasn't assigned this case until 2005.

The way it worked back then -- then and now at the Koskoff Firm is the Koskoff Firm basically decides whether they're going to take a case or not. So they have Attorney Joel Lichtenstein, who -- who, basically, is one of the people whose grieved here. His case was dismissed who, basically, who -- what -- what he would do is bring in doctors and -- and work with his staff to, basically, determine if there's a case at all.

So in this particular case, Attorney Lichtenstein met with the -- met with the D'Attilos in -- in the end of March 2003 and, basically, went through the fee agreement. That was created with them.

At that time, they signed the fee agreement. He signed the fee agreement, and it was put away. The first time Attorney

Nastri saw that fee agreement was in 2011, when they -- when there was, actually, settlement discussions active.

So notwithstanding the discussion about the fee agreement, we have some structural issues here that the fee agreement was created without her even being employed there. But notwithstanding that fact, Attorney Lichtenstein still had the ethical obligation to, basically, explain to the clients what the fee agreement was about.

Now, with reference to that specific issue, the -- he's already put -- he's already put in the document that he would testify in court that he explained the -- the -- the context of the fee agreement and what was involved. And he explained all of the issues that we're going to be talking about in a second. But most importantly, the D'Attilos have said in their recent filings in 2014 that they knew about the 28 percent fee, and they actually knew about the fact that he -- they were getting a discount from the original fee.

So let me go back to how the fee was -- fee was created -- fee agreement was created. Back in 2003, the standard fee agreement that

the Koskoff Firm had for complex cases was one-third. There was no variance from that, except that Michael Koskoff, the senior partner, agreed to accept a lesser fee.

Back in 2003, the procedures followed at that time was to send a client, a proposed client a fee agreement which, basically, would say you are gonna be paid -- you're gonna be -- we're gonna do these things for you. We're gonna take a contingency fee of one-third, and there's a -- there's a statute out there with reference to personal injury cases that -- that apply to this situation, but we're asking you to waive that provision if you want us to take your case. And then it lists all the costs, and said we're gonna advance the cost. That's basic instruction. That's one of the exhibits in this case. That's a standard fee agreement.

That was given to Cathy D'Attilo on February 28, 2003. It was just sent to her. It was not discussed at that point. All right. They didn't send it back. They didn't -- they didn't contact the Koskoff Firm for purposes of saying can we talk about this fee agreement. They didn't do any of that.

What they did is they went out and contacted some housekeeper, who basically is a relative of the -- of the Koskoff Firm -- I mean -- excuse me -- relative of the D'Attilos, apparently worked for some lawyer. And that lawyer contacted the Koskoff Firm, who later was determined to be a guy named Mark Greany.

He spoke to the firm. He spoke to Joel Lichtenstein. He spoke to Mr. -- Attorney -- Attorney Koskoff. And what he, basically, said was look, I'm just looking for a discount. They're paying thirty-three and a third. We want a special discount. We don't want a referral.

But he also said, because he apparently read the statute, he also said that in the fee agreement we want you to take the waiver provision out. The waiver provision, basically, was permitted in 2003 to be -- waive the statutory schedule because ten years before a case is decided by the -- by Judge Vertefeuille, who ultimately became Justice Vertefeuille of the Supreme Court, said that this is a private right. In -- in a complex case, the client can waive the statutory fee schedule, even though the

statutory fee schedule did not have a waiver provision in it.

So Attorney -- Attorney Koskoff explained that, and -- and -- and this lawyer, basically said, well, we don't want it in there. So they said well, we're not gonna take the case. And then, at that point, he said look -- and Attorney Koskoff came to an agreement and said this is what we'll do. If the statute gets amended, where it is now it's not amended, it -- it just has no -- it has no provision for a fee schedule -- I mean for a waiver.

If it gets amended in -- at that time, if we get any money on this case and if -- and if there -- there's a waiver provision built into a future statute, an amended portion of statute we will -- basically, we will be basing it -- entitled to 28 percent. And that was the oral agreement that was made at that time.

Right after that happened -- and the reason we know that happened, not just because Attorney Koskoff would say that in the year 2016, is that we provided to -- you with a Word document that created by Attorney Koskoff back in 2003. I think it was on

March 12, 2003.

This is about a week or two after we sent the D'Attilos their -- their -- their standard fee agreement, in which he puts down Mr. Greany's name, his address, his contact information, but most importantly, he puts down the name of that housekeeper, Rosanna, which he would not have known unless he talked to Mr. Greany.

Now, Mr. Greany today says I don't remember even talking to anybody. But the bottom line is that's what happened. The next day, another document from the past, 2003, Attorney Koskoff's secretary sends Attorney Greany the revised, unsigned fee agreement and says -- says to him -- says to him -- unsigned fee agreement and says to him, could you have these people sign it and send it back?

So there was a lawyer interface between the D'Attilos, the Koskoff Firm and -- and the Koskoff Firm and that a lawyer was acting on behalf of the -- behalf of the D'Attilos at that time.

There's been a lot of talk about -- there's been a lot of talk about what could have happened or should have happened and

what the meaning of the -- of the -- of the fee agreement meant. But the bottom line, that's what really happened, and that's what you should understand, that what really happened we sent this off to Mr. Greany.

Now, admittedly, since I've never spoke to Mr. Greany, I don't know a thing about what he would say or don't say. I -- I don't know what he would say, at least at this point, because I haven't spoken to him. But the bottom line is -- is that we -- we -- we wouldn't have sent him the fee agreement if we hadn't talked to him and, basically, modified it based on the discussion that we had.

So that's -- once that fee agreement was created, Mr. Greany had not sent back a signed one from the client. So then they came to see Attorney Lichtenstein, and Attorney Lichtenstein went through the entire process with them, explained that to them and, basically, as a result of that, signed the fee agreement in -- March 21st, I believe, of 2003.

Now, that's -- that's the sequence of events that happened back then in terms of the acceptance by the D'Attilos of that.

Now, you may say, if you're sitting here, say well, this could be something that, maybe, just came up and was thought about today in the year 2000 -- excuse me -- today, maybe this is something that came up to -- the Koskoff Firm is just kind of creating at this time.

Well, you can look at the dockets back then in 2003. You can also look at the fact that the D'Attilos said in the filings by Mr. Altschuler -- the filing -- if I can find it. This is called a predicate clause. I had it this morning, but I'll just wing it.

All right. And these are all exhibits we gave you and scanned as part of the -- the last filing.

ATTY. COUSINEAU: Do you know the number?

ATTY. NUZZO: Yes, it's exhibit number M.

ATTY. COUSINEAU: We have numbers from you, so --

ATTY. MOLINARO: No. M -- M from --

ATTY. NUZZO: M like Mary.

ATTY. MOLINARO: -- that's from the -- at -- the -- for the -- that you submitted --

ATTY. COUSINEAU: Submitted.

ATTY. MOLINARO: -- in connection with the agreement, right?

ATTY. NUZZO: That's the one that's in the document that was just sent off --

ATTY. MOLINARO: Yeah.

ATTY. NUZZO: -- with the Greany exhibits.

ATTY. COUSINEAU: Yes. Okay.

ATTY. NUZZO: It's M.

ATTY. MOLINARO: What -- which document did you say that was?

ATTY. COUSINEAU: M.

ATTY. NUZZO: It's number M, I think.

ATTY. DOWD: As in Mary.

ATTY. NUZZO: If -- if I get it right.

ATTY. MOLINARO: Yeah.

ATTY. NUZZO: It I get it correctly.

ATTY. MOLINARO: Consolidated statement of facts?

ATTY. NUZZO: Yeah. Yes. If you look at page five, paragraph 25. Do you want me to approach to show you where I'm --

ATTY. COUSINEAU: No. I -- I have it.

MR. SHUGARTS: That's it.

ATTY. NUZZO: You have it?

MR. SHUGARTS: Yup. We've got it.

ATTY. MOLINARO: Yup. Page five, number 25. Thank you.

ATTY. NUZZO: All right. On page five, 25, the allegation here by Mr. Altschuler in

the files before the Statewide Grievance Committee dated, it looks like February 17, 2015, it says at some point during the March 21, 2003 meeting, Dominick shook Attorney Lichtenstein's hand and said he appreciated the -- that the Koskoffs had lowered the rate, but that doesn't mean, quote, You do not do the same job as the other people. You know I am a mason, and if I -- if it's gonna -- if I give a lower price, I do the same job. I may use a little less gravel. Joel laughed, shook Dominick's hand and said I am going to remember that one. Don't worry about it.

So by their own statement here, unsolicited by us, they start saying it. Now, take a look at page -- our -- the same exhibit M, paragraph 55. It's on page eight, it looks like. On the bottom it says eight.

Cathy and Dominick vaguely remember that 28 percent was somehow a part of the agreement that they had not seen in nine years. The D'Attilos did not remember or realize that the agreement was based on a Connecticut law which strictly limited a contingency fee to a specific formula.

Now, there's two words in there: remember

or realize. The important element in there is that here are two -- here, eleven years after, in the pleading that we had nothing to do with that Mr. Altschuler created on behalf of his clients, he's admitting that his clients remember in two -- eleven years later that that 28 percent was discussed.

Now, is this the same thing as remembering every single detail? The answer is no. And I'm not claiming that. But the point being is this is not just something that we're making up here. It -- there -- the -- the D'Attilos are basically acknowledging in their own documents that basically they -- the -- this fee thing was discussed with Attorney Lichtenstein, and basically the issues of the 28 percent and also the discount came up.

And from his perspective, from Mr. D'Attilo's perspective, because I don't know what Mr. Greany -- Attorney Greany has told him. Don't forget, we're talking to a lawyer. We're not talking directly to Dominic D'Attilo. But from his perspective he was just looking for dropping the fee from a third to some other number. That's all he was looking for.

But this business about the sliding scale and what's it about is -- is -- is part of that -- is part of the conversation between two lawyers. And this -- and it appears that Attorney Greany was that lawyer.

Now, with reference to the fee agreement itself, what Mr. Altschuler is claiming -- Attorney Altschuler, excuse me, is claiming in his lawsuit and in his briefs, he's claiming that -- if you look at I and J. Those are the two documents I'm looking at, I and J. Do you have it? I just want to wait for you.

ATTY. MOLINARO: Thank you.

MR. SHUGARTS: Yes.

ATTY. NUZZO: You all have it?

ATTY. MOLINARO: Yup.

ATTY. NUZZO: It's page -- it starts on this -- now, what you're looking at here, for the record, is the first amended complaint. This is in the civil lawsuit. You're looking at the document that's the civil lawsuit. Do you need a -- do you need me to run up there?

ATTY. COUSINEAU: We're all set.

MR. SHUGARTS: No.

ATTY. MOLINARO: We're good.

MR. SHUGARTS: We've got it.

ATTY. NUZZO: You okay?

MR. SHUGARTS: Please.

ATTY. NUZZO: Okay. Good. And if you look at -- if you look in the -- the document, this is a -- this is part of the civil lawsuit that Attorney Altschuler filed on behalf of his clients. It's pending in Superior Court in New Haven.

The importance of this is this document was filed in January of 2015, and the grievance was filed about a month later. So this is his first representation here.

If -- if you look at the next page, page four, and it says -- item 20. I think it's highlighted. I don't know if you've got a highlighted version.

ATTY. COUSINEAU: It is.

ATTY. NUZZO: A close relative of the D'Attilos, and that happened to be this Rosanna that Attorney Koskoff wrote in his note back in 2003, that's the person. We didn't know that. But we saw this -- was a part-time babysitter for an attorney. Their relatives suggested and -- asking the attorney about a contingency fee. Okay? And as a favor to the relative, the attorney contacted the Koskoff Firm, which then agreed

-- they agreed. Now -- now, we're saying that Attorney Koskoff agreed -- the Koskoff Firm, it doesn't identify Attorney Koskoff, to significantly reduce this -- the fees by complying with the sliding scale and to remove the waiver provision.

Okay? So now we're talking about what Mr. Altschuler has created. He basically says there's someone out there, who's unidentified here -- when I saw this document, I didn't know what that part was.

And -- and that lawyer went over and talked to the Koskoff Firm and said, hey, listen, we know this is a complicated case. And just two weeks before we wanted a third, but now we'll take the reduced version, the sliding scale, for this complicated case. That's what he's saying here. He's saying that -- that they agreed to take the discount. In addition to that, they agreed to take out the waiver provision of their contract.

Now, when you look at that document and then you look at your grievance complaint, what he did -- Mr. Altschuler, when he wrote her complaint -- is he deleted out the words and to remove the waiver. So, apparently,

Mr. Greany, if he -- if -- what he had from Mr. Greany must have said, hey, listen, I didn't talk about the waiver. So that's what I assumed when I saw your document basically not identical to paragraph 20.

Also, he took out the language. If you look at your document -- your grievance complaint, it says the attorney -- talking about a contingency fee, he took that out as well.

So -- so he's revising this document -- he's the lawyer revising. But he has to be revising based on a witness telling him something. This is not something he created in 2015 so it sounds good. He's got to be -- be creating it because it really happened, that these events occurred -- happened, that our Koskoff Firm said that.

So, now, let's just say this is -- let's just this is what Mr. Greany would say that on those -- those situation, you've got me telling you about what the Koskoff Firm did, which I did tell you. And then you have Mr. Greany, basically, he's gonna say, hey, listen, the Koskoff Firm agreed to the sliding scale, agreed to the waiver, et cetera. That's what he said there. All

right?

Now, if you look at exhibit J, which is March 2nd --

ATTY. COUSINEAU: We have it. It's an email with an affidavit.

ATTY. MOLINARO: We have it.

ATTY. NUZZO: He had emailed an affidavit. This is what Mr. Greany really said because this is -- this is, again, something we didn't solicit. We have not received any discover in this case at all. This is something that Mr. Altschuler was producing voluntarily without us asking any information. We have filed no discovery in this civil case, so --

ATTY. MOLINARO: Can you -- can you tell me who this email is written to?

ATTY. NUZZO: Well, a --

ATTY. MOLINARO: It just has an address.

ATTY. NUZZO: I guess the legalmalpractice@gmail.com. That's his -- that's Attorney Altschuler's legal malpractice --

ATTY. MOLINARO: Okay. Thank you.

ATTY. NUZZO: That -- I think that's his logo or whatever he calls it. You know, whatever --

ATTY. COUSINEAU: That's his email address.

ATTY. NUZZO: Instead of saying Attorney Altschuler, he says I am legalmalpractice@gmail.com.

ATTY. COUSINEAU: But you're -- you're telling us that's his email address?

ATTY. NUZZO: Well, he -- I -- I -- I -- guess --

ATTY. COUSINEAU: Okay. Thank you. Thank you.

ATTY. ALTSCHULER: Yes.

ATTY. NUZZO: Okay. I don't know -- I don't know that.

ATTY. COUSINEAU: That's all I wanted to know was who the document was addressed to.

ATTY. NUZZO: Okay. So, anyway --

ATTY. MOLINARO: Attorney Nuzzo, this -- first of all, I -- I need to remind you, I think, that we've reviewed all the documents in this file.

ATTY. NUZZO: I'm sorry?

ATTY. MOLINARO: Okay. I want to remind you that we've reviewed all the documentation in this file. And we've let you go on at quite some time now.

ATTY. NUZZO: Okay.

ATTY. MOLINARO: You know, offering evidence and that's not really the purpose of this at this point. It's whether we're going to accept this 282.

So I'm gonna ask you to focus on what you really feel is relevant to making this determination.

ATTY. NUZZO: All right. Let me -- let me draw back to that. I appreciate your comment, and I -- I will try to be more concise here.

The reason I'm going into this is not that I'm trying the case. I'm trying -- it's hard not to try the case, you know, in a 282.

But what -- what I'm trying to explain to you is I think that the only ethical violation is gonna be the one that we're -- that's on the closest position that this -- this whole business about the fee agreement and everything that's being discussed here is really not part of this. And there's nothing more to this case.

Now, if I could just kind of concisely get to the end of this piece of it, what's important is, if you look at the affidavit you'll see that in -- with reference to this -- that that factual allegation is not

contained in this affidavit.

There's nothing in this affidavit Attorney Greany says that I talked to the Koskoff firm; they agreed to accept the sliding scale. Now, this is some document Attorney Altschuler gave to the local panel, and this is a document that basically provided that -- provided in the local panel that he -- he says is true.

Now, obviously, this is an opportunity for Attorney Greany to confirm what Attorney Altschuler wrote. And the reason I spent so much time on this is very simple. This whole case, and the civil case, and this grievance case is that somehow we took $5 million from our clients. This whole case is about that.

So the question is: What was the agreement? That's the first question, and Attorney Altschuler alleges what the agreement is. But, obviously, you can see that the person who negotiated the agreement, Mr. Greany -- Attorney Greany, is not confirming that. He had an opportunity to put it in this document. Mr. Altschuler had the opportunity to say, okay, just tell -- tell me what you wrote in the allegation.

So as far -- as far as we're concerned,

this is something that Mr. Altschuler made up himself. I'm not saying that --

ATTY. MOLINARO: He's not confirming -- but Attorney Greany is not confirming what you claim either.

ATTY. NUZZO: I'm sorry?

ATTY. MOLINARO: He's not --

ATTY. NUZZO: He's not confirming what we said either, but he's not basically -- the most important part of it, he's not saying that the Koskoff Firm agreed -- agreed to a sliding scale, agreed to a sliding scale. There's nothing in that document that says that.

Nothing in the document confirms anything that Attorney Altschuler said, and the reason I'm bringing that to your attention is to prove the case -- in a grievance case or to prove that we stole money, that it's fraud, that -- all the things they're claiming, you still gotta start with what the agreement was.

And -- and so if he -- if he started with an agreement that, basically, is made up by Mr. Altschuler -- Attorney Altschuler, not by what Mr. Greany is saying, then where are we in terms of this process?

And where we are in terms of this process is that what -- what the whole case is about, this whole case -- should be whether there's an 8.4 violation of fraud, or that there's something wrong with the fee agreement, what the fee agreement says, all of -- all of that, what it means, like what does it mean at that time, you know, if it's 20 percent then -- then, basically, you can get 20 percent, what does all that stuff in the fee agreement mean?

All of that, basically, ties into this one point because if the -- if the Koskoffs did charge 20 percent and it was appropriate and they based it -- their clients knew that and it was appropriate, then all the rest of the case falls into place. There's not trips. There's nothing fixed, nothing played out.

That's why I spent some time with that.

ATTY. COUSINEAU: So I have some -- I have some -- a quick question.

ATTY. NUZZO: Sure.

ATTY. COUSINEAU: The -- the 282 that is being proposed --

ATTY. NUZZO: Yes.

ATTY. COUSINEAU: -- deals with 1.15e. Am I correct?

ATTY. NUZZO: Yes.

ATTY. COUSINEAU: All right. So maybe we could hear from you about how 1.15e is an appropriate section to resolve the case, why you think that's appropriate.

ATTY. NUZZO: Because there's nothing else.

ATTY. COUSINEAU: What is it about 1.15e that is appropriate?

ATTY. NUZZO: Well, what 1.15 is really the one about accounting. It said you have to give an -- an accounting. That if you read through the -- the Practice Book rule it's about accounting.

But if you look further in the -- 1.15 it's -- I think it's subsection J, it says you have to keep the bills for seven years.

If you look further in subsection J of 1.15, it says you have to keep the bills for seven years. That's what it's about.

So what this is about: They didn't keep the bills for seven years.

MR. SHUGARTS: And that's the focus we're -- we're trying to -- you know --

ATTY. NUZZO: I -- I understand.

MR. SHUGARTS: -- we're trying to keep you on that.

ATTY. NUZZO: I -- I understand that.

MR. SHUGARTS: And that's important.

ATTY. NUZZO: I -- I apologize for sliding over here.

MR. SHUGARTS: Right. That's important for us because this is what's before us.

ATTY. NUZZO: I appreciate that.

MR. SHUGARTS: The whole case isn't before us.

ATTY. NUZZO: I appreciate that, but my -- my main concern is -- and I'll -- I'll shrink it right down because my job here is not to basically try to expand this. It's to try to point out that if I was -- I -- just like I said in the beginning, if I were sitting in your seats, I would want to know that this is a fair resolution. There's nothing out -- we're not letting Kathleen Nastri off the hook for something more significant. That's all I was doing.

MR. SHUGARTS: And when did Attorney Nastri join the firm?

ATTY. NUZZO: I'm sorry?

MR. SHUGARTS: When did she --

ATTY. NUZZO: She joined this firm in April of 2003, right after this fee agreement was signed, April of 2013.

ATTY. MOLINARO: But she didn't start working on the case until --

ATTY. NUZZO: -- 2005.

ATTY. MOLINARO: Okay.

ATTY. NUZZO: All right. So, now, in terms of the -- in terms of the -- leaving the fee agreement, just to talk generally, about -- excuse me. I have quite the cold here. I apologize.

In -- in terms of the communication that's the potential other issue, did my client communicate with the D'Attilos about the fee agreement. And why are we bringing that up? It's not listed. It's not part of the 282.

I'm only bringing it up for the same reason I brought the fee agreement up because I want to make sure you understand that she did communicate, in detail, about this, about this fee agreement when she found out about it.

See, because what was going on in this case, you can imagine, is that when the first case was tried and hung jury, the policy for the doctor was only two to four million. All right. And then -- we can all agree it's a massive trial. Right?

So when that case was going through, the

D'Attilos, basically, has to wait another two years to get -- to basically get the second trial because there was a hung jury in the first trial.

So as a result, during that period of time, there were -- the Koskoff Firm was -- was trying to get $4 million out of the insurance company for the doctor who settled this case. And they would have to be -- talk to their clients and say, look, I get a million dollars, I get two million dollars, they -- the clients rightfully said, how much is gonna be left for my clients? How much is gonna be left?

And so as a result of that, they, basically, had to go through a ritual of saying, well, you can be charged the third. That's what they thought because that's the standard fee agreement. You can be charged a third. These are the expenses we have as of this date. All right. This is the net that's gonna be there.

At one point, Cathy D'Attilo wrote a note saying, we don't want to settle within the policy limits. We want to keep going to the last. That is done.

So that's -- that's what they did through

the course of the trial. Then, what happened is they got this verdict of $58.6 million.

ATTY. COUSINEAU: Right. So we have reviewed all of this. And then they negotiated and had mediation.

ATTY. NUZZO: You've got that file.

ATTY. COUSINEAU: And every time there was -- we have all those signed documents where they set up the -- we -- we have reviewed --

MR. SHUGARTS: Everything.

ATTY. COUSINEAU: -- all of these records.

ATTY. NUZZO: Everything. All right. Let me just stop here -- let me just make this one simple comment about the documents.

What's really important about the documents is that my client didn't just talk to our -- them once. She talked -- talked to them multiple times because she'd been telling them one third. And -- and all of a sudden it's 28 percent, right? And she had to explain to them the 28 percent, and she was -- had to explain a fee agreement that she wasn't a part of.

So she went through this in great detail over a period of months, at least a month, you know, starting in November up through January.

So by the time they signed the documents for the 28 percent, there was multiple conversations in that whole period of time about the fee agreement.

And I already gave you one of them, basically, in a -- in a clip, just sent you an email that basically -- on November 29th they met and talked to the D'Attilos and that. They met in person. They talked to them on the phone. There was a constant conversation over a period of time.

So they did -- they did communicate this. So that at the time that they got to the 28 percent, they, basically -- the D'Attilos were satisfied that that would be an appropriate end result. That was the end of it. Okay?

So now -- and then -- then the fees were paid out, and the D'Attilos got somewhere around, I don't know, $17 million. Something like that. All right. And -- and --

ATTY. MOLINARO: Hold on a minute. There was also an email from Attorney Nastri to the complainants saying she made an error. She thought it was thirty-three and a third, but in fact it was --

ATTY. NUZZO: That's the one I was talking

about.

ATTY. MOLINARO: -- 28 percent. Okay That's --

ATTY. NUZZO: And that was because -- that was because back when they were talking about the case, it was a $4 million possible. She didn't put the fee agreement out back in the first trial. She didn't look at it. The first time she saw it was in November of 2011 because the D'Attilos weren't interested in settling within that period of time.

And if they weren't interested in settling and they were to pull that fee agreement out at that time, and said, okay -- it's -- they looked at it and she said, oh, my God, it's 28 percent. And basically it was -- was done differently.

So what she was saying in that email was, number one, I just saw the fee agreement for the first time. I pulled it out. I was wrong. You were right. It's 28 percent.

So -- so bottom line was, that's what happened. Physically, we're talking a couple years past when they're -- those -- those discussions about the -- the settlement of -- of one-third probably two years prior -- two years prior at that point.

So that's what happened. So they didn't pull the fee agreement out because -- because the D'Attilos weren't interested in settling the case. They wanted -- in fact, there's emails in there saying we want to try this case. All Right?

So -- so as a result of that, that's why the one-third was brought up and Kathleen -- because Kathleen was very concerned -- excuse me -- Attorney Nastri was very, very concerned that the client understood what was going on here.

They not only had to confirm the prior plea agreement, but they also had to confirm that they understood, today, when this money was being passed out, what was happening and why -- why these fees were being charged at the rate that they were being charged. All right?

And that was -- that -- that was very important to her, and she didn't want to, basically, lose sight of that throughout this whole process.

So now in -- in terms of -- in terms of the -- Kathleen Nastri, as an individual, you have her resume. So you know what -- you've read that. You know what she does for a

living. She's a trial lawyer. She's a mother of four daughters. She's happily married.

Not only has she not ever been before a grievance committee for any purpose -- for any purpose, but I've known her for at least 20 years. And I can say personally that she has never, ever put herself -- her self-interest ahead of her -- ahead of her clients, ever, in any situation.

In all the -- terribly (sic) reading in the press about her and all the negative things about her, I can say they're not true, but probably some press person sitting in the back will say I'm just making it up.

But the bottom line, they are true. One thing you can be sure of anybody who's tried a case, and she's tried plenty of them. And so have I. One thing you can be absolutely sure when she was trying that second case in 2011, but that time the D'Attilos were destitute. They were penniless.

They -- the one thing Kathleen told me about the D'Attilos from day one is that they loved their children -- their son like no one else. They didn't institutionalize their child. They, basically, took care of that

boy in their home even though -- even though they didn't have the money to do so.

And they, basically -- and we have no -- no animosity or -- whatsoever about any of this as it related to the D'Attilos. They worked really hard to keep the pieces together, and they, basically, fought for their son that whole time. My client told me that from the first day I interviewed her about this. She's told me that just recently when we were getting ready for this hearing.

So there was never any issue. There was never a discussion, by the way, when my client was representing them about a fee dispute, never. The first time we ever knew about was, basically, in 2015 -- '14, when -- when we got the lawsuit.

But -- when they went over after the -- the verdict, they went home and had a big pasta dinner. There was -- everybody was very happy about this.

But aside from all that business about the D'Attilos and how hard -- and how hard they work to keep their -- their life together and how difficult it was for them until they had this money, when Kathleen Nastri was trying that second case, there was only one thing

she was thinking about, one thing. And a good lawyer, basically, thinks along these same lines. She was thinking about the fact that she had to convince this second jury of the righteousness of this decision.

She had to convince that second jury -- she had to convince that second jury that they had to take care of Danny D'Attilo for the rest of his life. And she wasn't thinking about a fee -- a fee agreement, what happened back in 2003. She wasn't thinking about any of that.

She was thinking about the fact that these people needed the money to take care of their son during the time that was indicated. They needed the money to take care of their son during this time that was indicated.

Fortunately, the jury agreed and gave a $58.6 million verdict. Yes, it's a big verdict; 8.6 of that was a life-care plan. And I don't know if you know what a life-care plan is. But, simply stated, a life-care plan is the cost to take care of Danny for his whole lifetime. So they gave 50 million plus the life-care plan.

And she worked around the clock. She put all her skill in her -- and Jim Horwitz is

sitting in the courtroom right behind me. They worked around the clock to make this happen.

Now, you know in trial work you can't guarantee an end result, but they, basically, never gave up on their client. And the fact that they're going all through this, we'll go through all this. But everything we've been -- that's been thrown at them this whole year or so is totally false.

And I'm saying that to you. And I realize it sounds like it -- it maybe sounds insincere in some way, but it's not. We will fight this case. We will fight the -- the -- the false claims that's been made here.

Just like I went through that fee agreement. He made up that fee agreement -- what -- what was agreed supposedly. Mr. Greany didn't tell them that. That's why I brought it up. And the point being is that we'll fight this case because this is wrong. What they've done to my clients is wrong, and, basically, I'm sorry that we're dumping all this on you in the 282 hearing. But it's been a long year. Every day -- Christmas day reading in the press how some firm is taking advantage of some -- of -- of their clients.

Not true.

MR. SHUGARTS: Okay. Thank you very much.

ATTY. NUZZO: And I'm sorry -- I'm sorry I've overdone this.

MR. SHUGARTS: No. I -- you know --

ATTY. NUZZO: I just -- I'm speaking from my heart, and I -- I, basically, am sorry I've overdone this. And I -- I do appreciate taking the time.

And -- and -- the way, this is the longest conversation I've ever had at a 282 hearing since I've been before the grievance committee. So I apologize. You can ask any questions you want. Attorney Nastri is here, and you can ask her any questions you want.

MR. SHUGARTS: Thank you very much.

ATTY. MOLINARO: Just give us one moment. The Disciplinary Counsel have anything in response to Attorney Nuzzo's --

ATTY. CARRASQUILLA: Actually, the D'Attilos would like to be heard through their counsel.

ATTY. MOLINARO: Right.

ATTY. COUSINEAU: We are going to hear them, but we didn't know if you had anything to add before they --

ATTY. CARRASQUILLA: Just briefly I do. I

-- in Attorney Nuzzo's statement there are, just for the record, he was referring to the commentary of Rule 1.5 and stated something to the effect that a fee schedule is sufficient and kind of end of story there.

But, however, the commentary does go on to state that a fee schedule is sufficient if the basis or rate of the fee and whether and to what extent the client will be responsible for any court costs and expenses of litigation set forth. So I just wanted to point that out.

And just to highlight, Attorney Nuzzo did just state that, but just to highlight the issue since we've gotten into the issue of the fees, there was never a fee dispute until, approximately, two years after the settlement funds were disbursed. Thank you.

ATTY. MOLINARO: We're gonna take a morning break, and then we'll have the complainant put on their -- their comment to the agreement.

ATTY. CARRASQUILLA: Very good.

ATTY. ALTSCHULER: How long is the break?

ATTY. COUSINEAU: Ten minutes -- is ten minutes enough? Ten minutes.

ATTY. ALTSCHULER: Thank you. Can we

leave our -- in here.

ATTY. MOLINARO: Um-hm.

ATTY. COUSINEAU: Yes.

(The committee stood in a ten minute recess.)

ATTY. MOLINARO: Is everyone ready? Okay. So at this point, procedurally, the complainant can make a statement. We understand that's going to be through their counsel.

ATTY. CARRASQUILLA: It is.

ATTY. ALTSCHULER: Thank you, everybody. Mr. Nuzzo mentioned that he was speaking from the heart. I'm also gonna speak from the heart, but I'm also gonna speak from the facts. And, unfortunately, you've heard a lot incorrect facts.

And I know that we're not trying the case right now, but I think it's terribly important that this be decided on the facts and that you take into account the whole purpose of the grievance process.

It doesn't really have anything to do with the particular attorneys. It has to do with the integrity of the system.

Now I -- the two who went before me spent about an hour, and I was shocked that there

was information you were not given. I'm gonna focus first on the $600,000 and the failure for a law firm to count -- to account for hundreds of thousands of dollars of bills because that precludes the client from double checking what the law firm did.

Now, I don't know if you turned over what I gave to you, Attorney Carasquilla, but I gave Attorney Carasquilla evidence that a part of that, about $80,000, was improperly charged.

But let me first start with one of the things that was left out. I'm gonna hold it up, but I'm having this because I -- I -- I have trouble reading. But this is from June 30, 2011.

ATTY. CARRASQUILLA: I'm gonna object. This is not relevant to the hearing before us.

ATTY. MOLINARO: We don't even know that --

ATTY. COUSINEAU: Well, I don't know what he's saying yet, so let's hear --

ATTY. MOLINARO: Why don't you identify the document and give us an offer --

ATTY. ALTSCHULER: I'll -- I'll identify it, and you can say whether it's relevant or

not.

ATTY. COUSINEAU: Can I ask you, is it something you've already submitted to -- in -- in your complaint?

ATTY. ALTSCHULER: This I submitted through her. I don't know if this was part of -- it has to do with -- it's directly relevant to the $600,000 and the accounting issues --

ATTY. COUSINEAU: Right.

ATTY. ALTSCHULER: -- and representations that were made to you.

ATTY. COUSINEAU: Okay. The question is, was it one of the --

ATTY. ALTSCHULER: It was the --

ATTY. COUSINEAU: -- numerous exhibits in your complaint?

ATTY. ALTSCHULER: I don't think it was.

ATTY. COUSINEAU: So we don't have it before us?

ATTY. MOLINARO: No.

ATTY. DOWD: We can't --

ATTY. ALTSCHULER: That's right. But I also -- you're correct. You -- you have to know what this information is because it's directly relevant to what they have told you.

And there was a stipulation in 2011 --

ATTY. COUSINEAU: But --

ATTY. ALTSCHULER: -- so I won't show you the documents.

ATTY. COUSINEAU: -- but -- excuse me --

ATTY. ALTSCHULER: I'll just tell you the facts.

ATTY. COUSINEAU: -- sir, every piece of information we heard from the other counsel --

ATTY. ALTSCHULER: Yes.

ATTY. COUSINEAU: -- was something we already had in this very voluminous record.

ATTY. ALTSCHULER: Right. I wasn't given a copy of what Mr. Nuzzo submitted to you. I had no idea that this was submitted.

And I have everything to Karyl Carasquilla, and I would expect that the chief disciplinary counsel would convey to you evidence that shows what they're saying is not true.

So if you're telling me that you don't want to hear it, then --

ATTY. MOLINARO: No. You know what, that's not what we're saying.

ATTY. ALTSCHULER: -- that's what you're saying.

ATTY. MOLINARO: There's procedural rules

that are in effect. You may not offer any new evidence.

ATTY. ALTSCHULER: I'm not offering any. I'm going to talk about it. This -- he went on and on and on talking about things that weren't true.

I'd like to go for one -- we've taken more time to talk about this than for me to tell you what it is, and you can decide whether it is relevant.

ATTY. COUSINEAU: But this isn't about time. This is about the rules of procedure, and you're not allowed to introduce new evidence. If it's not in our exhibits already --

ATTY. ALTSCHULER: You could take judicial notice of this because this is an official document that's been filed in court. This is something that's a part of the record.

So I would ask you to take judicial notice of the document that I'm not allowed to talk to you about.

ATTY. MOLINARO: Could you please identify the document one more time.

ATTY. ALTSCHULER: Yes. I would love to identify this document.

ATTY. MOLINARO: Don't -- and then give us

a brief offer of proof. That's what we've asked you to do.

ATTY. ALTSCHULER: Okay. Okay. It's a June 30, 2011, petition under Practice Section -- book -- 237 -- 2.27a. It's signed by Patricia King.

It's got a -- a docket number of NAH-CV11. This was the official document. It was filed with either this council or with the clerk.

It's part of the public record.

ATTY. MOLINARO: What is it?

ATTY. COUSINEAU: But what is it?

ATTY. ALTSCHULER: Okay. It's -- I'm about to tell you.

ATTY. MOLINARO: What's the title of it?

ATTY. ALTSCHULER: I just gave you the title. This is --

ATTY. MOLINARO: You gave us the caption.

ATTY. ALTSCHULER: -- a stipulation whereby --

ATTY. COUSINEAU: In a different case?

ATTY. ALTSCHULER: No. It was --

ATTY. CARRASQUILLA: Yes.

ATTY. ALTSCHULER: -- the Koskoff --

ATTY. CARRASQUILLA: No. It's --

ATTY. ALTSCHULER: -- the Koskoff Firm.

ATTY. CARRASQUILLA: Could I just be heard

a minute. I think I can --

MR. SHUGARTS: Sure.

ATTY. COUSINEAU: Was it in relation to this matter we're hearing?

ATTY. ALTSCHULER: It -- it -- it's in relationship to their accounting practices. There were representations made to you that they took care of their accounting practices.

But in reality, they were supposed to have taken care of those accounting practices in 2011. They avoided -- that's -- they -- Koskoff and Koskoff avoided discipline because they were in a random audit. They were found not to have complied with the rules. Everything that happened subsequent to that should not have happened.

ATTY. MOLINARO: Okay.

ATTY. ALTSCHULER: And you are telling me you don't want to know that that --

ATTY. MOLINARO: Jonathan --

MR. SHUGARTS: We're not there yet. Attorney Carasquilla can you -- can you -- well, I'd like to hear from everyone, but --

ATTY. MOLINARO: Yeah. Yeah.

ATTY. DOWD: Okay. But you can't --

ATTY. COUSINEAU: No. No. He just wants to hear from --

ATTY. DOWD: Oh. Counsel. Yeah, okay.

ATTY. COUSINEAU: He just wants more -- he wants to hear from --

ATTY. CARRASQUILLA: Okay. So this is a June 30, 2011, dated document. It is a petition filed by the Office of Chief Disciplinary Council in the Superior Court.

It has no relevance to the -- these proceedings. This is regarding the Koskoff, Koskoff and Bieder, P.C., firm as a defendant, no particular lawyers. And, again, I claim it as not relevant to these proceedings.

ATTY. MOLINARO: Attorney Nuzzo?

ATTY. NUZZO: You want to hear from me?

ATTY. MOLINARO: Yes.

ATTY. NUZZO: It has no relevance. It doesn't apply to any client funds. No client funds were in any -- impaired at any time.

And -- and I agree with it. I mean, I can speak about it. I have it here, but the bottom line is Mr. Altschuler is trying to bring it in to show that somehow we're devious. And we're not.

And we used client's funds inappropriately. We did not. And -- and so notwithstanding that it -- it is not

connected to this case at all, not connected to the D'Attilo's cases, not connected to the accounting of $655,000, not connected in any way.

ATTY. MOLINARO: This is somewhat difficult because we're -- in the sense that it -- it -- it feels like you're trying to offer evidence that's not in the record. And so we're going to sustain the objection because, one, you don't have the opportunity to present evidence.

You can make a closing -- you can make a statement, and you -- you need to keep your comments confined to what's in the record.

ATTY. ALTSCHULER: Well, there's been a representation that they took care of their accounting practice in 2011, and that's not true. So if -- if you don't care about that, then that's your decision.

So it relates to this --

ATTY. COUSINEAU: Sir --

ATTY. ALTSCHULER: -- now Mr. Nuzzo --

ATTY. COUSINEAU: -- sir --

ATTY. ALTSCHULER: -- Mr. Nuzzo --

ATTY. COUSINEAU: -- sir, we do care about the --

ATTY. ALTSCHULER: No. No.

ATTY. COUSINEAU: -- proceedings here. Excuse me.

ATTY. ALTSCHULER: Yes?

ATTY. COUSINEAU: And it's really not appropriate for you to make those comments to us. We are here volunteering our time, and we do care about the facts in this case.

There are procedural rules of evidence, and we are making a ruling. It doesn't mean we don't care about this matter. So, please, refrain your comments in that area.

ATTY. ALTSCHULER: Well, I object to the ruling because you could take judicial notice --

ATTY. COUSINEAU: Excuse me --

ATTY. ALTSCHULER: -- of this single document.

ATTY. COUSINEAU: -- I don't think you get a chance to object to our ruling.

ATTY. ALTSCHULER: Well, that's my --

ATTY. COUSINEAU: So continue with your statement, please.

ATTY. ALTSCHULER: -- that's my problem. We have no rights. So Mr. Nuzzo brought up in his statement about the life-care plan, so he opened up the door to talk about the life-care plan.

There is sworn testimony of May 2011, that life-care plan said under oath, my fee is $25,000. I told Karyl Carasquilla. I gave her the documents. They actually took out $82,000 for the life-care plan.

There's been no explanation of why they took $82,000, when he swore -- when the life-care planner -- he referenced -- swore under oath his bill was going to be between 23 and $25,000.

That's under the case that two of you were involved in that we -- it's the *Monihan* case, I believe. You described $100,000 settlement fee that was taken by the attorney as being a criminal act. It was so --

ATTY. CARRASQUILLA: I'm gonna object. Again, I don't know what case he's referring to.

ATTY. ALTSCHULER: The one I talked to you before about.

ATTY. CARRASQUILLA: And, again, if it's -- it's not relevant to these proceedings. Again, I do not see the relevance.

ATTY. ALTSCHULER: These are arguments. I gave you my statement. This is about law, isn't it?

ATTY. COUSINEAU: Excuse me. Let's try

not to speak over each other for the benefit of the monitor.

ATTY. CARRASQUILLA: Okay.

ATTY. ALTSCHULER: How come he wasn't interrupted at all, and I'm getting interrupted?

ATTY. MOLINARO: Okay. The -- what you have the ability and right to do is make comments regarding the 282 and why it should not be adopted.

ATTY. ALTSCHULER: Right. But are you gonna rightfully argue it for me? I have the right to say what I need to say. If -- if you're going to edit it --

ATTY. COUSINEAU: Actually --

ATTY. ALTSCHULER: -- why would you get up here and give it because I -- I want to be able -- I want to have the opportunity to --

ATTY. COUSINEAU: I think we're going to take a recess for a moment, please.

ATTY. ALTSCHULER: Sure.

ATTY. COUSINEAU: Maybe you can contain yourself while we're doing that.

ATTY. ALTSCHULER: Okay.

(The committee stood in a brief recess.)

ATTY. MOLINARO: Okay. Thank you.

ATTY. COUSINEAU: Is she ready? Are you

ready?

THE COURT MONITOR: I'm ready.

ATTY. COUSINEAU: Okay.

ATTY. MOLINARO: Okay. Thank you for your patience. We're back on the record.

Attorney Altschuler, you mentioned something about the *Monihan* decision.

ATTY. ALTSCHULER: Yes.

ATTY. MOLINARO: What did you want to -- what was your offer of proof regarding that?

ATTY. ALTSCHULER: Okay. Well, I -- I guess I would ask the panel -- or the committee just to take judicial notice of that and this grievance complaint, 14-0722. And I was trying to point out that this panel -- two of the people on this panel signed on to an opinion where they described an attorney who took funds from a settlement amount that was being held in trust by taking all of the funds, in that particular case. But it would, certainly, apply to a situation when they're taking $4.34 million more than they're entitled to.

You said that it was -- converted the funds, I'm just paraphrasing, the conduct constitutes a criminal act that reflects adversely. And part of this was a failure to

account.

So we're dealing in this case -- in this case it was $100,000. In this situation, they have not accounted for more than $600,000.

And I was about to point out that the life-care planner -- there was evidence that I gave to her that -- I would say the representation -- he testified under oath in May 2011, in the -- the -- the malpractice case. His sworn testimony was that he was going to be charging 23 to $25,000. Now, you have the computer printout as part of the record.

ATTY. COUSINEAU: Yes.

ATTY. ALTSCHULER: So if you go through that computer printout, you'll see Larry Foreman, and the name of his company -- I can't think of the name of his company. I can find it in a second.

And in addition, you'll see a handwritten notation on the first page and on the last page. And on the last page, if you look at it, and I don't know what exhibit it is for you, you'll -- it says $68,712 --

ATTY. COUSINEAU: Right.

ATTY. ALTSCHULER: -- and 92 cents.

Something like that. And up above it is written Foreman.

ATTY. COUSINEAU: Right.

ATTY. ALTSCHULER: Okay. So I thought that Foreman charged $68,000, which is about three times more than he testified at trial.

It turned out, as you go through all of the computer printout and you look for Foreman, and perhaps they know the name of his company. But, essentially, it adds up to about $82,000.

What I'm saying is, that's direct evidence that they misappropriated that amount of money. Forget about the $4.34 million.

And I brought this up to the attention of Attorney Carasquilla. She didn't say anything about it. She didn't say how it got resolved. I've asked her several times, Did they respond to that? Did they give any answer for how they can be charging $82,000 for something that should not have cost more than $25,000.

This is not a situation that is amenable to a reprimand. This is situation that's amenable to a full hearing, just on this one issue alone because they -- these are not little discrepancies.

Attorneys have been suspended and disbarred for writing check of $2,500. And the -- the message seems to be that we don't like it when you do $2,500. We don't like when you do $100,000. But you know what? $600,000 in legal costs that you cannot prove, hey, we'll give you a reprimand.

$4.34 million, which I'll talk about in a minute, you know, we're not even gonna give you a reprimand on that because there's a court case.

There's no case that says you lose jurisdiction when there's a civil case. And by the way, that situation -- that case is frozen. It's frozen because the judge stated the defendants didn't follow the proper procedures for compelling arbitration. So it's literally in a state of suspended amination.

If they don't follow the proper procedures to compel arbitration, that case will never go anywhere ever. So it's basically dead right now. So there's nothing that's happened.

But even if we were in the middle of that, I've never heard of a -- whatever this could be used for or not used for is irrelevant

because that gets determined by the civil court.

In places, you know, there's a citation you can't use Rules of Professional Conduct violations to create a civil complaint. All right. So what does that have to do with saying we shouldn't talk about the $4.34 million?

ATTY. COUSINEAU: Can I ask --

ATTY. ALTSCHULER: Yes.

ATTY. COUSINEAU: -- can I ask you about -- you said, I think, on May 11th -- or -- or some date that the life planner testified?

ATTY. ALTSCHULER: Yes.

ATTY. COUSINEAU: Was his testimony that he only received $25,000?

ATTY. ALTSCHULER: No. His testimony was that he was asked -- as you know, when there's an expert who testifies, you want to ask them how much they're getting so you can tell the jury, you know, whether or not it's a pure opinion or not. He testified that it was going to be between 23 and $25,000.

ATTY. COUSINEAU: For his testimony?

ATTY. ALTSCHULER: For -- no, of everything, for all of his work. He had already done the life-care plan. That was

finished in April of 2011.

The last thing, of any major significance he did in this case, was in May when he testified.

The other thing that came out at the trial, which the -- you could take judicial notice of it that he had worked for the Koskoff firm since --

ATTY. COUSINEAU: That who had, Foreman?

ATTY. ALTSCHULER: That -- yeah.

ATTY. COUSINEAU: Okay.

ATTY. ALTSCHULER: The life-care planner, Mr. Foreman, had been an expert for the Koskoff firm 65 times previously to his testimony, and he had been paid a total of about $1.5 million.

If you do the math, that comes out to an average of $23,000, approximately, per time that he did a life-care plan.

But that's not how much money was taken out from Danny D'Attilo and Cathy D'Attilo and Dominic D'Attilo. The firm took out more than $82,000, and we've got proof of it in that exhibit that I referred you to.

ATTY. MOLINARO: Okay. So keep going with the reasons that you object to the 282.

ATTY. ALTSCHULER: Well, so -- so using

your case, when there's not an accounting with significant amounts of money, and in this particular case there's more than $600,000, again, I think you could take judicial notice of the briefs that have been filed by the Office of Disciplinary Counsel in the *Tafdoff* case.

And in that particular case, it's the position of the Office of Chief Disciplinary Counsel that misappropriation includes failure to properly account for funds. And it doesn't make a difference what -- what the intent is.

So it's not proper in this case when they already have a problem with their accounting, which they didn't follow through in 2011, when there's evidence on the record that they have literally charged, in that particular instance, with Mr. Foreman. Because -- I will tell you that's the only item that we have evidence of. And that's only because he testified under oath. Everything else has been destroyed.

I didn't quite follow Mr. Nuzzo because I thought he said they scanned everything. So does that mean they not only threw out the paper documents that -- but they also deleted

the -- the documents they scanned because that was my understanding of what he said.

ATTY. COUSINEAU: Yeah. That's not what I heard. I heard him say there were some clerical errors that they didn't get scanned. But -- or they weren't saved or something.

But let me ask you this.

ATTY. ALTSCHULER: Okay. Sure

ATTY. COUSINEAU: I thought I read in the record that they not only provided you an accounting but cancelled checks and things also.

ATTY. ALTSCHULER: Yeah. They did --

ATTY. COUSINEAU: Okay.

ATTY. ALTSCHULER: -- provided -- right. They provided cancelled checks.

ATTY. COUSINEAU: All right.

ATTY. ALTSCHULER: However, and it -- it is mentioned in -- in the documents I submitted below that a number of the checks are made out for multiple people. So you -- it's not just the D'Attilos. And I have -- I'm sure I can find some samples. And they -- they included the checks as part of the record, and you will see many of them are illegible. Sorry. Many of them are made out to whatever the vendor and it's for multiple

invoices.

Some of them are made out for the D'Attilos, but even then, that doesn't address the question because the check may show that they paid it but it doesn't give me, as the attorney, or give the client an opportunity to look at the actual bill to see if that was a legitimate bill.

We never got a bill for Foreman. I've never seen that bill for 68,000 or $82,000. And do the -- having the check maybe shows they paid it, but it doesn't show that they paid it for a legitimate reason.

In the case of Mr. Foreman, he testified each of -- on average he gets $23,000. All of the sudden, he gets $82,000.

By the -- by the way, the other thing to note, that computer printout that you have was printed out in May of 2012. That was a year after the case was over. Why was Mr. Foreman's $68,000 written in hand, if that was a legitimate expense that had been legitimately entered, it would have been computer entered.

But, yet, I don't know when it was handwritten. I do know it was there. Now, did Mr. Foreman get paid the $82,000 and

everybody winked at each other and said, ah, we gave him the 82,000 instead of 23,000. I don't know what the motivation is. I do know as attorneys that we'd better account for every single penny.

And it's bad enough if he can -- there was a grievance case where an attorney charged a stop check fee of $20, and he sent it to the wrong address. And the Grievance Committee said he can't do that.

We're not talking about $20 here. We're talking about tens of thousands of dollars for Mr. Foreman, and we're talking about hundreds of thousands of dollars over a period of nine years because -- this raises another question, which is relevant here, that at the end of any contingency fee case, it's more important than ever that law firms be able to give their clients copies of the bills or the invoices. We only have -- they had about 30 experts. And yet there was only one retainer agreement in their record.

What, they threw those away, too? We don't know what the hourly fees were. We don't know what the conditions were. We know nothing about it.

And as a client who wanted to say, you

know what, it's great we got $25 million. Now, you want to charge us $633,000. That's kind of a lot. Maybe, I'm gonna pay a few dollars to an accountant to take a look at. Can we get your records?

It took me months and months and months to get this computer printout, and I don't know why it wasn't turned over initially. What -- when -- it had a handwritten note on it from Mr. Foreman.

So this is a serious problem that the -- a slap-on-the-wrist reprimand. And I understand nobody wants a reprimand, but the reality is there are cases where people get five, ten, fifteen, twenty reprimands. And, finally, a court might say, you know what, this won't necessarily lead to suspension, but you have 20 reprimands.

It's not good to have a reprimand. But it's -- this is not about Kathleen Nastri. This is about the system itself and what the system is going -- what message it's going to send to every attorney in the State of Connecticut.

You don't really have to keep track of $600,000. Maybe, we'll give you a reprimand the first time. Oh, yeah, you can try -- you

can take that $82,000 for an expert, even though the expert testified it was going to be 23 to $25,000.

I don't think that's the message this committee wants to send, and I think in -- in the case that the two of you were on, when you called it a criminal thing to not be able to account for money, I believe that's true because if you don't know what's happening and if it's going to happen here.

The other problem with this agreement is that there was no -- as far as I know, she didn't make it a condition that Koskoff made a representation that other clients haven't been harmed.

There is no audit of the Koskoff firm, again. There has been no looking at whether other Koskoff clients have been harmed, even though there's this huge shocking testimony for the one thing that we can look at. The one and only item we can look at is completely off base.

So for -- I -- I don't think that this should be subject to a reprimand. It should be subject to full hearing where these and many other questions should be answered, and they should be answered under oath because

it's important. This is not a little thing.

Okay. So were there any other questions about that part of it?

ATTY. MOLINARO: No. I don't think so.

ATTY. COUSINEAU: Not at this point.

MR. SHUGARTS: No.

ATTY. ALTSCHULER: Okay. Then, now Mr. Nuzzo raised the issues of the retainer agreement, and that's important because I don't know if it's part of your record. But Attorney Carasquilla sent me additional allegations that she told me she was going to be filing.

ATTY. COUSINEAU: It is not part of the record.

ATTY. CARRASQUILLA: And I'm going to object. It's not part of the record. It's irrelevant to these proceedings.

ATTY. ALTSCHULER: Well -- well, it -- it is relevant. But -- okay.

ATTY. COUSINEAU: Well, it --

ATTY. ALTSCHULER: So --

ATTY. COUSINEAU: -- it -- you may think it's relevant --

ATTY. ALTSCHULER: I'm sorry.

ATTY. COUSINEAU: -- but we can't take any evidence.

ATTY. ALTSCHULER: I -- I -- I -- I -- I understand. I -- I -- I -- I'm sorry.

ATTY. COUSINEAU: All right.

ATTY. ALTSCHULER: And I started out by saying that I was gonna speak from the heart. So I apologize if I've been too passionate. I -- I'm not meaning to do that.

ATTY. COUSINEAU: Thank you.

ATTY. ALTSCHULER: But I've been working on this for a long time, and I've been accused of falsifying things. I've been accused of all kinds of things by the other side, and they're simply not true.

And I would like a chance to -- to defend myself --

ATTY. COUSINEAU: Right. I understand that.

ATTY. ALTSCHULER: -- from the attack --

ATTY. COUSINEAU: We've read all the correspondence back and forth that's in our record.

ATTY. ALTSCHULER: Yes.

ATTY. COUSINEAU: And I think that we're doing really well right now. So let's continue on.

ATTY. ALTSCHULER: Yes. Okay.

ATTY. COUSINEAU: Okay.

ATTY. ALTSCHULER: So let's talk about this retainer agreement. You probably can't see it, but I wanted to blow it up just to have it here.

ATTY. COUSINEAU: We -- we have them in our record.

ATTY. ALTSCHULER: I know, but I'm gonna hold it up to you just to look at it myself. Okay?

ATTY. COUSINEAU: All right.

ATTY. ALTSCHULER: So according to the grievance reply that they submitted, Michael Koskoff is the one who drafted this retainer agreement, principle retainer agreement. It's a little bit more than one page, one page and one line.

ATTY. COUSINEAU: Which one do you have the -- the ultimate agreement?

ATTY. ALTSCHULER: Yeah, the March 21st --

ATTY. COUSINEAU: Okay.

ATTY. ALTSCHULER: -- 2003, agreement.

ATTY. COUSINEAU: Well, I know. I have two. That's why I wanted to make sure I had -- I was looking at the same one.

ATTY. ALTSCHULER: Oh. Right. The -- the other one was the initial agreement that was initially sent out.

ATTY. COUSINEAU: Right.

ATTY. ALTSCHULER: And what's noteworthy about that, it includes waiver language, and it -- I think it's the fourth paragraph down. So if you look at that --

ATTY. MOLINARO: So you're -- just so we're clear, you're referring to the one executed on March 21, 2003, your clients?

ATTY. ALTSCHULER: Yes.

ATTY. MOLINARO: Okay.

ATTY. ALTSCHULER: And by Koskoff.

ATTY. MOLINARO: Correct. Yup.

MR. SHUGARTS: Um-hm.

ATTY. ALTSCHULER: It's signed by Joel Lichtenstein. It's -- not to be flippant here, it's known as a contract, right? It's not a retainer agreement.

It's got two signatures. It's a retainer agreement that sets forth the terms and the conditions of what the retainer agreement is all about.

And so I would suggest that Cathy and Dom could have gone into negotiations with the Koskoff firm. They could have had an army of attorneys. They could have had any negotiations in the world.

But the reality, is Michael Koskoff wrote

this agreement, and this is what was signed on behalf of that firm. And it says, and I'll just read it in part, pursuant to statute, KK and B shall receive fees of. And then it lists the statutory tier, which if you read it all out comes to about ten percent, a little bit more than ten percent.

If it's $25 million, it's 10.64 percent. That's what all of these various numbers -- they quoted the statutory tier exactly, except they used numbers instead of letters.

And then the next sentence that was written by Michael Koskoff says it -- that statute is not in effect and the money is to be distributed to the client, KK and B shall receive fees of 28 percent of the total recovery.

Okay. If that statute is not in effect. That's what Michael Koskoff wrote, and it -- it has the words 28 percent in it. So there is 28 percent in here.

But there's a condition. The condition is for them to get 28 percent, the statute, fee cap statute, has not to -- has to be out of effect.

They don't dispute, in anything that they've written, in the civil case and the

grievance that the fee cap statute was in effect in May of 2011 and in January of 2012 and when they finally cut a check in May of 2012, as well.

So -- and I'm gonna talk about Mark Greany in a moment. But that's what we're -- what we have here, and the issue is there has to be a hearing about this. They cannot be allowed to walk away from interpreting this to mean that means we can talk 28 percent, when it says in black and white they couldn't take that money.

That's why I'm opposed, my clients are opposed, to any kind of agreement here because whatever they say about Mark Greany -- and I'm gonna talk about him because he's completely misrepresenting the facts. It really doesn't make a difference because here it is in black and white. And the local panel said this is the only agreement that is in effect. Here it is, March 21, 2003, this is the agreement, and everybody in the world can see what it says. And there's nobody in the world, apparently except Michael Koskoff and Kathleen Nastri, who can read that to mean anything other than $25 million, you have to use the statutory tier because too

bad for us, us being the Koskoff firm in May of 2011, too bad. They didn't get rid of the fee cap statute.

So how is this -- how is it protecting our system, where attorneys -- just to add, there's been no investigation. There's been no inquiry of the Koskoff firm, as far as I know.

Do you have this agreement with anybody else before 2005? How many other Koskoff clients signed an agreement like this, and how many other times have they had to pay 28 percent because they were misinformed by their own attorney? You negotiated a 28 percent fee. Well, that's true. Except, there's a condition, and contracts have to comply with conditions. And there is no way that they were entitled to $4.34 million.

They were -- and I was told by Attorney Carasquilla that even if this was being interpreted the way they want to interpret --

ATTY. CARRASQUILLA: I'm going to object as to any conversations that Attorney Altschuler and I might have had during, you know, negotiations, especially this, prior to today's hearing.

ATTY. COUSINEAU: Sustained.

ATTY. MOLINARO: Yeah. We're gonna sustain that.

ATTY. ALTSCHULER: Okay. Well, let me phrase it differently. If in fact it's true what they say, and we'll talk about that, that suddenly they -- well, they didn't really address this, that in 2005, when the fee cap statute was amended all of the sudden Cathy and Dom had to pay 28 percent.

They had an ethical obligation to alert them in writing: by the way, clients, you know that retainer agreement that you signed with us where we said if the fee cap statute is not in effect? Well, it's in effect, but we didn't really mean that.

And, by the way, as of this moment, and that would have been July of 2005, you now owe us 28 percent. Why was that unethical for them to fail to notify the D'Attilos in writing because the D'Attilos would have had an opportunity to say, you know what, we've thought about it, we're gonna find another law firm.

That's not what they did. In fact, you're not gonna find a single piece of paper anywhere where they ever told the D'Attilos about this supposed amendment having being

triggered. And I'm gonna talk about that in a second.

So that needs to be investigated. It doesn't need to be ignored or saying, you know what? Here's you -- a little slap on the wrist for accounting.

And I -- I want to point the -- the relief here is different than the relief in civil court because if this committee says there's a civil case, that has nothing to do with protecting the profession. As grievance -- all the grievance decisions say, when you read all of them from the Connecticut Supreme Court down, this is not about attorneys, it's about protecting the system.

And so it's the obligation, I believe, of this committee to look at the facts as they are and say whether or not we think this conduct is ethical. The chips fall where they may.

If there was a legal reason for you not to do that, then they would have filed some sort of motion to say you're not permitted to do it. And there's been no such motion. There's been no such motion by the Disciplinary Counsel.

You have the absolute right, I believe you

have the absolute obligation, to look at these facts. And it doesn't make a difference how it impacts the civil case.

So we have the retainer agreement, with -- the local panel stated is the one and only agreement in this case. And then we have that email from November 29th, and this is the one and only time, the November 29, 2011 email, this was an email that was sent -- it wasn't sent to Cathy D'Attilo or Dominic D'Attilo. It was sent to Michael Koskoff, James Horwitz, Bill Bloss, Josh Koskoff.

And you have it there. I'm -- I'm gonna read what I think is the -- the crucial part of that. I, Kathleen Nastri told her, Cathy D'Attilo, they had negotiated a 28 percent fee, which would save Danny close to a million dollars, if the case settled for $18 million.

Well, it's true that they had negotiated a 28 percent fee. Except there was a condition, and the condition was the fee statute had to be out of effect for it to apply.

He doesn't mention anything about this. He doesn't say, I told them -- even -- assuming this is an accurate rendition of the

conversation, I'm gonna assume for purposes of this right now.

So she's telling her partners, I told her it was 28 percent, and that's what she negotiated. The problem is that was a false statement. If that's what she told Cathy D'Attilo, then she was not, as her attorney, telling her all the facts.

What she should have said, by the way, there's a provision in there that says we get 28 percent of the -- and I'll quote it, quote, if the statute is not in effect at the time the money is being -- to be distributed.

We interpret that to mean so and so. But you might want to get in this separate counsel to let you -- because on the face of it, it -- it doesn't say that.

And in their grievance, they actually admit the little minor point of it doesn't say what they want it say. It's -- it says this, that if the fee cap statute is not in effect.

But this email, I would submit to you, is proof positive that the fraudulent information and the misrepresentation, similar to what you were talking about in the *Monahan* case, that the attorney telling the

client, you negotiated 28 percent, can be relied on by that client.

And that's why they believed it was 28 percent. It was in the agreement. It wasn't something that I made up. But the issue is, was that all that was said. And, of course, you can see for yourselves, it's not just 28 percent.

Okay. Then she also says at the bottom of this, She seemed to understand both the settlement status and the fee agreement. Now, if you look at the grievance reply, which doesn't have a sworn statement, but we can assume everything that's represented for her is going to be her sworn testimony.

Even though she seemed to understand it, according to the reply, the D'Attilos continue to have questions for some reason. It says that right in the grievance reply from the Koskoff respondents.

It went on and on and on. And they kept on questioning it. I really wanted to make sure they understood. So on January 4th we had this discussion.

And, actually, before I get -- let's go back to this whole story about Mark Greany. And there's a complete distortion of the

facts surrounding it. And this is also -- Mark Greany's initial email is in the record, and was the affidavit from Mark Greany -- could I take a look at it?

ATTY. MOLINARO: Yes.

ATTY. ALTSCHULER: Thanks.

ATTY. CARRASQUILLA: Does the committee know what exhibit that was, the Greany affidavit? I know it was --

ATTY. NUZZO: I think it's J. I -- I'm guessing.

ATTY. COUSINEAU: J. You're absolutely right. It's J.

ATTY. CARRASQUILLA: Thank you.

ATTY. ALTSCHULER: There's also emails.

ATTY. NUZZO: They go along with the exhibits.

ATTY. COUSINEAU: It's the second page of J.

ATTY. ALTSCHULER: Okay. So there's a question about what happened in March. I think the question is completely, totally, unequivocally answered by the agreement that was signed by Joel Lichtenstein, who at the time I -- I -- I believe he had been an attorney for about 20 years.

So it was drafted by Michael Koskoff, an

attorney of 37 years at the time. It was reviewed, according to Joel Lichtenstein in the grievance reply, line by line on March 21st. And he didn't change the language, even though he claims he said it doesn't mean that. It means this following stuff about if it's in effect and if it's amended and if it has a waiver provision, then we get 28 percent.

Okay. And they're claiming that because Mark Greany was involved, that makes it okay. Well, in that exhibit where there's an email that I received on March 2, 2015, because I talked to Mark Greany.

And, basically, you have it before you. He gave -- listen to what he remembered, My involvement was limited directly to the Koskoff Firm. I called the firm, told an employee I was not interested in a referral fee. I would appreciate the courtesy of a discount, and I don't remember if it was male or female. I did this out of compassion for the D'Attilo family. Dominic's sister, Roseanne, was the nanny to my son. She was like a family member to me and my son.

Okay. This was in March of 2015. I didn't see this March -- I only got this as

part of the grievance in June. I didn't have this Michael Koskoff --

ATTY. COUSINEAU: The memo?

ATTY. ALTSCHULER: What's that?

ATTY. COUSINEAU: Is that his memo you're talking about?

ATTY. ALTSCHULER: That's the memo.

ATTY. COUSINEAU: Okay.

ATTY. ALTSCHULER: From March 12th at 5:01 p.m. So I had no information. All I did was talk with Mark Greany.

Now, if you look at the memo, Dominic D'Attilo, hoping to say that he was referring but forego a referral, Mark Greany --

ATTY. COUSINEAU: You -- You can't refer us to which exhibit that is, can you?

ATTY. ALTSCHULER: I --

ATTY. COUSINEAU: Was it attached to yours or attached to theirs?

ATTY. MOLINARO: Theirs.

ATTY. ALTSCHULER: It was attached to their grievance --

ATTY. COUSINEAU: Ah. I got it.

ATTY. ALTSCHULER: -- grievance reply.

ATTY. COUSINEAU: Twelve. The original.

ATTY. ALTSCHULER: Okay.

ATTY. COUSINEAU: See, you have to

understand, we have three separate documents with three --

ATTY. ALTSCHULER: Oh. Sure.

ATTY. COUSINEAU: -- sets of exhibits.

ATTY. ALTSCHULER: I know there -- there are a lot of exhibits in this case.

ATTY. COUSINEAU: Sixty-six in one. Some are numbers. Some are letters, and so --

ATTY. ALTSCHULER: Too much.

ATTY. COUSINEAU: -- to find things you just have to give us a minute.

ATTY. ALTSCHULER: I know. That's why I like to use page numbers when I have papers.

ATTY. MOLINARO: This is -- this is the -- my understanding was this is the receptionist or the person who took the message -- message.

Are you saying this was prepared by Attorney Koskoff?

ATTY. ALTSCHULER: That's what it -- it said in the material they -- I -- I -- I -- I don't know if he physically typed it, or -- or -- or he recited it. But maybe Mr. Nuzzo can tell us.

ATTY. NUZZO: I -- I -- do you want me to speak to that exhibit? First of all, it is in evidence. It's in our --

ATTY. COUSINEAU: It is. We have it.
ATTY. MOLINARO: We have it. Yup.
ATTY. NUZZO: -- reply brief. Basically, what happened there is Michael Koskoff typed --
ATTY. ALTSCHULER: I'm sorry.
ATTY. COUSINEAU: Now we all know your taste in music.
ATTY. ALTSCHULER: That was a ringtone.
ATTY. MOLINARO: Go ahead, please, Attorney Nuzzo.
ATTY. NUZZO: Basically, what happened is Michael Koskoff, Attorney Koskoff, typed on a blank piece of paper in Word. It's a Word document, electronic notes of him talking with Mr. Greany, Attorney Greany. And -- and those are his notes.
But to verify, because there's no date on the -- on the document, we put the Word directory in there as well, which shows at the bottom when it was actually created.
So -- so that -- that exhibit is simply to show it's a contemporaneous note made at the time. I think he spelled Mr. D'Attilo's name incorrectly. But that's at the bottom. It shows the date and time it was put in.
So that's what that document is. It's --

and it -- and it -- I think it references Roseanna's name, no referral.

ATTY. ALTSCHULER: Right, but it --

ATTY. NUZZO: And I think -- I think Mr. -- I think Attorney Greany's contact information.

ATTY. ALTSCHULER: Well, this is -- was prepared by --

ATTY. NUZZO: That was prepared --

ATTY. ALTSCHULER: -- Mr. Koskoff?

ATTY. NUZZO: -- by Attorney Michael Koskoff.

ATTY. MOLINARO: Okay.

MR. SHUGARTS: Okay.

ATTY. NUZZO: But because it didn't have a date on it, we put the Word directory in there to -- to show you when it was created.

ATTY. ALTSCHULER: All right. So there's no dispute about the date. It's March 12, 2003.

So if you look at Michael Koskoff's referral notes and you compare with the email that I was sent in March by Mark Greany, it corresponds exactly.

It mentions Roseanna. We refer -- forego referrals, et cetera, et cetera. There is no mention of 28 percent. There is no mention

of any discussion about Solerno. There's no mention of that in anything because Mark Greany, in his sworn affidavit, which you also have a copy of, stated, I wasn't representing them.

I made this one phone call, and his represent -- and he didn't have the benefit of this memo. I didn't have the benefit. It's not like they said to him, by the way Mark, there is a memo that I have here, and this is what it says. And why don't you write me out an affidavit that corresponds exactly to what this memo says.

We didn't get this memo until after his email was written. And -- and his -- and all he was doing in the affidavit was responding to some of the things.

The fact that he said, I had nothing to do with the retainer agreement, when in fact what happened -- but he emailed the -- the retainer agreement to Mark Greany. Mark Greany didn't respond.

The D'Attilos went to the Koskoff Firm on March 21, 2003. If they thought he -- they were represented by Mark Greany, there's nothing in the record to say they -- Mark Greany gave a waiver that you can talk to my

clients about me.

That -- there is zero evidence that Mark Greany was involved. We have his sworn testimony. Now, he is an attorney, and he's sworn, under oath, I had nothing to do with the retainer agreement. But I don't want this to cloud what I think the main issue is.

And I mentioned this, I believe, in one of my documents. Let's say he did negotiate. Let's say Mark Greany, who also says in his affidavit, I was a real estate attorney and a criminal attorney. They would like this committee to believe that Mark Greany, who doesn't do contingency fee personal injury, somehow is engaged in this intellectual conversation with the premiere personal injury attorney of Connecticut, Michael Koskoff, and arguing with him about, Gee, I want to protect your firm because what if there's a problem with the waiver.

I mean, I don't even understand their explanation of this waiver thing. But -- all I know is it would have protected them and not the D'Attilos.

But the point I'm trying to get across is that their story about what happened with Mark Greany is not supported by the one and

only document that exists, taken by Michael Koskoff, where he's -- he doesn't write 28 percent, he writes down Roseanna's name; so we know there was this conversation.

Mark Greany doesn't deny he's focused on -- he doesn't remember who it was. But this is -- this confirms what Mark Greany writes, and it also confirms he had nothing to do with the retainer agreement.

But, as I said, for purposes of why we're opposing all of this, the idea that a law firm can have an agreement that says in black and white what the conditions are. And then they go ahead and tell their client, by the way, you negotiated 28 percent. But they don't finish the sentence and tell them the rest of it. That's unethical.

And if they end up taking millions of dollars for that, it's exactly what you found in the *Monahan* case.

ATTY. MOLINARO: *Monahan*.

ATTY. ALTSCHULER: I'm not sure how to say the name. It's criminal. It's stealing money without full accounting because not telling the D'Attilos that it was that condition was the same. It was pure fraud through and through. And those are what the

facts are.

That's not me just making this up. Those are the facts. So we'll be coming to the -- and there is a problem with the local panel's decision.

It was even criticized by Chief Disciplinary Counsel a little while ago. But it does say in item number four that the retainer agreement signed by the complainants is -- that fee -- at number five is the only signed fee agreement between the complainants and the respondent law firm.

So that brings us to January 4, 2011. And so then there are a couple of documents signed there, and I, actually, have another one blown up. That's where there's this settlement statement, and there's -- it says *D'Attilo versus Vince Curello* (phonetic), and there are two of them on that page. One was we decline $18 million.

And I'm sorry, I don't know -- know the numbers.

ATTY. MOLINARO: Just -- could you just bear with us for minute?

ATTY. ALTSCHULER: Sure.

ATTY. MOLINARO: This is the distribution sheet.

ATTY. ALTSCHULER: G23A and G --

ATTY. NUZZO: They're at exhibit 31 in the grievance, if that will help.

ATTY. COUSINEAU: Yeah.

ATTY. NUZZO: Thirty-one. I think 31.

ATTY. COUSINEAU: Thirty-one is --

ATTY. NUZZO: They're the grievance -- our response. Excuse me. The grievance -- our -- our grievance response.

ATTY. COUSINEAU: This is an authorization dated January 4th.

ATTY. NUZZO: There's two. There should be two. There should be one for $18 million.

ATTY. COUSINEAU: Yes.

ATTY. NUZZO: And one for $22 million.

ATTY. COUSINEAU: Is that what you're --

ATTY. NUZZO: Exhibit 31 of the grievance response.

ATTY. COUSINEAU: Is that the document that you have, authorizations to settle?

ATTY. ALTSCHULER: Yeah. There --

ATTY. COUSINEAU: Okay.

ATTY. ALTSCHULER: -- there -- there are three original documents. There are two from January 4th, and there's one from January 11th. And there's another one, which we've never seen the original.

ATTY. COUSINEAU: I have two here.

ATTY. MOLINARO: And there's --

ATTY. ALTSCHULER: There are two for January 4th.

ATTY. MOLINARO: There's one more.

ATTY. ALTSCHULER: Now, if you look at the grievance response filed by Mr. Nuzzo, there's a -- a long explanation in there about what Katherine Nastri would, apparently, testify to.

So even though she maybe supposedly explained to Cathy D'Attilo on November 29th about the 28 percent, according to their grievance reply, they kept on asking questions about it.

If she really wanted to make sure they understood -- so she sat down with them. She went over everything. And she told Cathy and Dom this time, you know, you negotiated an agreement that if the -- if the fee statute was amended and there was a waiver provision in it, then you would owe us 28 percent.

And I think she says somewhere in that grievance reply, and I think they understood or she seemed to understand. Now, one of the things that I want to point out is that for some reason, from November to January 4th,

Cathy, who's got a high school diploma, and Dom, who's 11th grade, they were having problems wrapping their head around this.

But yet, even though Kathleen Nastri was so concerned that they understood this, she didn't bother to write to them. As per our conversation, I just wanted you to know that we all agree that this is what happened. I will tell you, if there was such an email, it wouldn't entail the Koskoff Firm because it would just be a furtherance of what's fraudulent, which is all the clients that they owed 28 percent. That's absolutely false.

So you have these documents, which are signed by the D'Attilos. And it says, attorney's fees 28 percent. Well, they had been told that it was 28 percent. They had no reason to question.

The Koskoff respondents are making a big deal about how the retainer agreement actually means 28 percent, and they've come up with this story about Mark Greany. And they -- and they claim that the notes of Michael Koskoff somehow prove there was this discussion of 28 percent. And they're telling everybody in the world that it's 28

percent, including their clients. And they signed this document.

But this is not an amendment to a retainer agreement. This is not counter-signed by the Koskoff Firm, and this was signed in January of 2012. The fee statute was amended in 2005, and if this was going to amend the March 2003 retainer, then it -- it needed to have that big block letter disclaimer. It doesn't have any of that.

This is not a contract. This, in fact, is part of the fraud. This is where we can see in black and white that, yes, they signed 28 percent, and we now know it's not 28 percent.

So quote, the problem we get into here is that according to the grievance reply, Kathleen Nastri was absolutely clear with them. You know, this was the reason why you had the 28 percent. I'm pretty sure they understood. That's it.

So everything, as of January 4th -- that's important to remember that date because then we come to what happened with Colleen Fries.

Now, I'm just gonna briefly talk about Colleen Fries, and she gets the retainer agreement. Collen Fries is a personal injury attorney who was appointed by Judge

DePanfilis at the end of January of 2012.

And she requested a copy of the retainer agreement, a copy of the medical malpractice complaint and a copy of lawsuit costs. So on February 15th she is sent a copy of the retainer agreement. And there's an email, which I'm sorry I don't know the exhibit number -- or if you happen to -- it's the one where she says, Did you ask Bill?

ATTY. COUSINEAU: Who's it an email between?

ATTY. ALTSCHULER: It's an email between Kathleen Nastri and -- and Barbara Larocca. I -- I can find it. I'll find it for you.

Oh, this is -- okay.

ATTY. COUSINEAU: Check 41. Bethel rental, is that the one you want?

ATTY. ALTSCHULER: Something about a Bethel rental.

ATTY. MOLINARO: No, it's the one --

ATTY. ALTSCHULER: No, it was an actual email that I have here.

ATTY. MOLINARO: To Colleen Fries about --

ATTY. ALTSCHULER: Let me find --

ATTY. MOLINARO: -- the documentation. Are I talking about from Attorney Nastri to Colleen?

ATTY. ALTSCHULER: No. No, there's one -- there's an email chain, and the -- on the bottom of the chain is Barbara Larocca to Collen Fries, We, with respect to the D'Attilo matter, have had the following documents: the complaint, the retainer agreement, explanation of lawsuit.

And then Barbara Larocca forwards that to Brad Gallant. It says, Here is what we sent to Colleen Fries. And above that up there is an email, which you can't see on this, but there's a --

ATTY. COUSINEAU: If it's not in our -- if it's not in --

ATTY. ALTSCHULER: No. No, it is.

ATTY. COUSINEAU: Okay.

ATTY. ALTSCHULER: It's either -- it's either in mine and it's also --

ATTY. COUSINEAU: Okay.

ATTY. MOLINARO: Okay. So --

ATTY. ALTSCHULER: -- a -- it's absolutely --

ATTY. MOLINARO: -- hold on --

THE COURT: -- in there.

ATTY. MOLINARO: -- just -- just so we're clear, this is number 44 on the respondent's answer.

ATTY. ALTSCHULER: Okay. And there are two different versions. They sent you one version, and they sent a different version to the Grievance Committee in their reply.

But do you have -- it -- it just doesn't make a difference which one.

ATTY. MOLINARO: No. No.

ATTY. ALTSCHULER: This starts at the top, So whatever goes to Colleen goes to Brad as well. And I don't have that right in front of me.

It's the email that says, Did you ask Bill or Jim before you sent the payment?

MR. SHUGARTS: Okay. Give us a second.

ATTY. COUSINEAU: Does it have something blacked out on it?

ATTY. ALTSCHULER: Yeah. I -- I mean, there's something definitely blacked out --

ATTY. MOLINARO: All right. That's 43. I apologize for that.

ATTY. COUSINEAU: Are you saying in your complaint is a different version?

ATTY. ALTSCHULER: Yeah, because that's -- we were given a different version.

ATTY. COUSINEAU: Okay.

ATTY. ALTSCHULER: The version we were given didn't have that material on top. In

fact, we didn't -- it didn't have the -- the who it was from, who sent it. It was a client.

But if you have the original, I just happened to print out this version, but the relevant part of it for me -- because you have the part where it says, Did you ask Bill or Jim? Does that --

MR. SHUGARTS: Yes.

ATTY. ALTSCHULER: Okay. So what's crucial about this is that, as I've discussed, on January 4th, everything was all set.

The D'Attilos understood. There was no question in Kathleen Nastri's mind as to what it meant. But because the law guardian -- the guardian ad litem, she wrote to her paralegal, Did you ask Bill or Jim before you sent the retainer? I think they both had some concerns but recognized we would need to send it.

So starting with the last part first, of course the GAL appointed by the judge says, I want the retainer agreement. They don't have a choice. They can't argue privilege.

But the important -- this is Bill, who is Bill Bloss, and Jim, Jim Horwitz, according

to Kathleen Nastri on February 15th they had concerns.

Now, what concerns could they possibly have had? Because according to their grievance reply, this was a slam-dunk case. We had this discussion with Mark Greany. Everybody knew what it meant. We told Cathy and Dominic D'Attilo. We told them on November 29th.

Well, we saw what they told him on November 29th. It doesn't include any reference to the amendment of the complaint. It doesn't include any reference to Mark Greany.

January 4th you can see what Kathleen Nastri is going to say.

ATTY. COUSINEAU: Does your February 15th email chain have the following email sent at 1:42 p.m.?

ATTY. ALTSCHULER: I'm sure I have that, but --

ATTY. COUSINEAU: Okay.

ATTY. ALTSCHULER: -- it's -- that -- I -- I did not see that until the June --

ATTY. COUSINEAU: Okay.

ATTY. ALTSCHULER: There's a chain. So there are two different versions of it.

ATTY. COUSINEAU: Right.

ATTY. ALTSCHULER: But in both versions the part that is relevant, I think, is -- would be exactly the same.

ATTY. COUSINEAU: Well, I think the response is also relevant.

ATTY. ALTSCHULER: Right. Well, I don't -- where is that -- what response -- do you have that, the email response?

ATTY. COUSINEAU: It says at 1:42, which is ten minutes after --

ATTY. ALTSCHULER: Right.

ATTY. COUSINEAU: -- that first. She says, Yes. Before I sent the email, I showed Jim yesterday what I was sending.

ATTY. ALTSCHULER: Right.

ATTY. COUSINEAU: The only thing he didn't want to send was the authorization --

ATTY. ALTSCHULER: Right.

ATTY. COUSINEAU: -- us to accept 25 million. He didn't say he didn't want to send the engagement letter.

ATTY. ALTSCHULER: Well -- well, he -- they didn't have a chance -- choice to send the engagement letter. They had to send the engagement letter. Kathleen Nastri recognized this. That wasn't the issue.

ATTY. COUSINEAU: I know, but I think your argument was that -- that -- that this denotes that Bill and/or Jim had a problem sending the --

ATTY. ALTSCHULER: Right.

ATTY. COUSINEAU: -- retainer account.

ATTY. ALTSCHULER: Well, no --

ATTY. COUSINEAU: The retainer --

ATTY. ALTSCHULER: -- Kathleen -- Kathleen Nastri did. She said, Did you ask Bill or Jim before you sent the retainer?

I think they both had some concerns. We're now dealing with Kathleen Nastri. Kathleen Nastri is telling the grievance panel that on January 4th she absolutely knew what the story was about the retainer agreement that it was Mark Greany, that it was the 2005 amendment.

So in terms of why there shouldn't be a settlement here, that's an interesting question. Why did Kathleen Nastri have a concern about that retainer agreement? Why would she think they had a concern about it if it was so clear about everything else they're saying? That -- that's the question. I can't answer that question.

But the reality is this: that Jim Horwitz

could not have said don't sent it. That's not what happened in this case. The allegation is they did what they absolutely had to do. Imagine if they didn't send the retainer agreement to Colleen Fries. I mean, can you imagine them not doing that? Of course they had to send it. That's not what happened.

The complaint alleges what happened on February 16th, Brad Gallant sat down with Cathy and Dominic D'Attilo and started to read these horror stories, basically the rioting act, about why the Norwalk Probate Court was so horrible that you had to move immediately.

And I'm not gonna go over all the details of what happened but, clearly, what happened is they moved. And the reason they moved -- the allegation is because they didn't want the probate court to look at the retainer agreement that says they would owe 28 percent only if the fee statute is not in effect, because I'm sure if Judge DePanfilis or Judge Keegan had read that they would have said what's going on here?

Now, according to Colleen Fries -- and it's all in the record. It's all in the

emails. She said I didn't review anything. I didn't do anything, and, essentially, I didn't know anything about it.

But there was a hearing scheduled for Norwalk on February 29th. So they went into this emergency mode to get the D'Attilos to move from the home they had lived in for many years, the home, actually, that Mr. Foreman visited and under oath testified it was a lovely home that was fine for their purposes for now.

So they had this emergency move, and it wasn't because Jim Horwitz had any option about sending it, it's because they had a concern that what would happen when she got it. And they took care of that concern.

That's what the evidence is. They didn't present any evidence in their reply about why this move took place. They -- there is no affidavit from them. We included an affidavit from Jeff Fioto (phonetic), who was the real estate agent. That's in your record as well. And he said that we were told by Cathy and Dominic's attorneys -- told us we had to move.

ATTY. MOLINARO: I think, and I'm not meaning to interrupt you, but we -- the --

the focus of this is the 282. And I think we're clear on your position. It shouldn't be adopted because you feel like the rule violation alleged and addressed in there is -- doesn't reflect what happened. And that the -- the representation of a reprimand is not an appropriate disposition.

And you're also articulating reasons why there may be other concerns related to this entire process, which would be part of, perhaps, any additional probable cause findings if that happens.

So, depending on what happens with us today -- so I -- I know this is difficult, but you -- you really need to focus on the 282.

ATTY. ALTSCHULER: Right. And -- I mean, this came about because we've spent quite a bit of time --

ATTY. MOLINARO: I understand that, and you've had quite a bit of time to talk about --

ATTY. ALTSCHULER: Correct. And I -- I appreciate that. And listen, the relationship is actually -- my understanding is what you have before you is the local panel's decision. Correct?

And you're deciding whether to settle the case based upon what the local panel says to you?

ATTY. MOLINARO: No. We're deciding whether to accept the 282 proposed disposition that was provided to us that was signed by Disciplinary Counsel, the respondent and his attorney.

ATTY. COUSINEAU: Based on not only what we've received from the panel but from all of the record that we have --

ATTY. ALTSCHULER: Right.

ATTY. COUSINEAU: -- received and reviewed and what we've heard here today.

ATTY. MOLINARO: So the only issue before us -- hold on a minute, is whether we accept a violation of 1.15e and if the reprimand is the appropriate sanction.

ATTY. ALTSCHULER: Yes. And so the local panel forwarded the -- obviously -- effecting what the local panel did, but they've -- they found violations of 1.6 and 1.15c, comingling of funds.

Well, maybe they understood what happened was comingling of funds, but I think it's relevant to this because if the local panel is telling you to use comingling of funds,

the local panel said here there was a conflict of interest even though they didn't actually cycle 1.7. And if -- there was anything there was a breach of confidentiality. This resolution of accounting issues, and I'm not gonna repeat all the stuff I said about accounting issues, even in light of that brings into this issue of the $4.34 million because the local panel has said there was only one retainer agreement. And we can see what the retainer agreement says.

So how is it possible for a law firm to be able to take $7 million when they were only entitled to $2.66 million and not face a hearing for explaining that because if -- if this is approved, they're not going to have to explain anything to anybody.

ATTY. COUSINEAU: So let me ask you a question, a hypothetical question, sir.

ATTY. ALTSCHULER: Sir.

ATTY. COUSINEAU: If we have the Grievance Panel's findings, probable cause for 1.6 and 1.15c, suppose there was an agreement that they would accept both of those. That -- you wouldn't have a hearing then.

That's not the point that -- that --

ATTY. ALTSCHULER: No. Well, the -- the point I'm trying to make is that the local panel has raised issues. It's total -- view its finding of fact. There is one retainer agreement in effect.

ATTY. COUSINEAU: But they've only found two --

ATTY. ALTSCHULER: Right. And --

ATTY. COUSINEAU: -- issues of probable cause. We're not allowed to go back and --

ATTY. ALTSCHULER: I understand.

ATTY. COUSINEAU: -- open up the other ones.

ATTY. ALTSCHULER: Right. But -- but you're allowed to though, as I understand -- and, you know, fortunately I've never been grieved. I've never been involved in a grievance before. So I apologize if I don't know all the ins and outs. And this is my first, and hopefully last, experience with this.

But I'm just trying to say that --

ATTY. COUSINEAU: No. No, but finish your thought because we're not allowed -- our committee is not allowed to add additional --

ATTY. ALTSCHULER: No. No, that's not what I'm saying. I'm saying -- I guess what

I'm trying to get across to you is that they're trying to settle all of this, which has -- and they've spent a lot of time talking about the retainer agreement and Mark Greany and the $4.43 million.

ATTY. COUSINEAU: Right.

ATTY. ALTSCHULER: So, obviously, it's important. So what I'm saying is that even just settling in on the $600,000 issue and leaving all these things unlooked at, unanswered, unexamined -- now, whatever the Disciplinary Counsel may do, if this is -- the settlement is denied, we'll see. We'll see what happens.

And at that point, at a minimum apparently, we'll have at least what the local panel has included. And maybe there will be additional things. But I -- I would assume that you could at least say, well, there are other issues here and this accounting settlement shouldn't be agreed to because it leaves everything else unquestioned.

ATTY. MOLINARO: All right. So we understand your position.

ATTY. ALTSCHULER: Yes. I understand you have.

ATTY. MOLINARO: And that's --

ATTY. ALTSCHULER: If I could just have a moment to -- may I talk with my clients?

MR. SHUGARTS: Sure. Please, go ahead.

ATTY. ALTSCHULER: So -- I'm sorry.

ATTY. MOLINARO: Go ahead.

(Pause.)

ATTY. ALTSCHULER: So I apologize, again, if I was too passionate. I didn't mean to talk over you at all.

I've been living with this case for a while, and as an attorney, I know the grievance process is not supposed to punish the attorney. It's supposed to protect the courts and the system.

And I think this is an unusual case. I've looked at a lot of grievance decisions, and I can't say this is the most complicated on that's ever been looked at. But it involved high profile attorneys.

The outcome of this case is going to be looked at by attorneys and by -- by the public. And they're going to see what's allowable and what's not allowable. So we're not even here to decide whether or not they've done anything wrong specifically.

We're here about whether it was their

probable cause that merits a hearing on the facts of the case so we can get to the bottom of this. Maybe there's an answer for the former, and maybe there's not. Maybe, they have an explanation regarding why they took $7 million.

They are documents that they haven't turned over yet. Maybe, there's something that I don't know. But I do know that for them to walk away, Kathleen Nastri, Michael Koskoff, with a reprimand about $600,000 accounting issue without anything else will harm the system I believe.

It will be the evil that courts often talk about. We can't self-regulate. If we cannot protect the public from attorneys who commit misconduct, then the whole system is in jeopardy.

And this is not a decision you have to make about whether they should be suspended or disbarred or anything else. It's just to say, we need to have the hearing because this is a complicated case, and the record before us doesn't answer whether or not this will ever happen again, doesn't answer whether it's happened to others.

And if we just close the book on this,

then we are not doing our job that we are wanting to uphold, which is getting to the truth of the matter.

So I appreciate your time, and thank you.

ATTY. MOLINARO: Thanks.

MR. SHUGARTS: Thank you. Attorney Nuzzo, I have a question for you. Can you --

ATTY. NUZZO: Yes. Very short -- could I ask -- could I respond to a little bit of it?

MR. SHUGARTS: Just -- can you just answer the question first?

ATTY. NUZZO: Oh, I have a question?

MR. SHUGARTS: Yeah. I would like to ask you something.

ATTY. NUZZO: Oh, you ask me a question. Okay. Sure. Go ahead. I'm sorry.

MR. SHUGARTS: That's okay. Can you -- can you describe for me the clerical error?

ATTY. NUZZO: The clerical was, as I -- let me stand up. I talked to the -- I talked to the chief controller and also the head administrator of the hospital -- not hospital, the chief administrator of -- of the firm.

And I said, well, how did this happen? You know, what was going on? And he just said, well, we had the system set up in 2000,

just like I told you.

And that -- and what happened then is the practice groups all kind of get their hands in, in the end. Someone wants to husband some of the written docs they don't want to be scanned in.

Like, for example, in this case, we do have a small part of the original file dealing with the settlement documents. So they make -- they make a discretionary decision on what to keep and what not to keep.

And it wasn't -- wasn't -- wasn't -- wasn't -- it wasn't centralized, so the -- the -- the -- the -- the office -- top of the office didn't basically control what was going on at the -- in practice level.

So in this particular case, they had a -- 99 percent of the case scanned; a small part of the case not scanned, like the settlement documents near the end. And these invoices, apparently, didn't make it into the scanning system.

So that -- that was the process. They have since, basically, revised that system. They don't do that anymore. It's controlled from the top, not from the practice group at

the bottom, and -- and -- and that's what happened.

MR. SHUGARTS: Do you have a sense of how many documents that 99 percent did get --

ATTY. NUZZO: I'm sorry. I -- I -- I'm having trouble hearing you.

MR. SHUGARTS: That's okay. You said you had -- that there was about 99 percent of the documents that were scanned --

ATTY. NUZZO: Right.

MR. SHUGARTS: -- and made it. Do you have a sense of how many documents did not make it?

ATTY. NUZZO: Only -- the only thing that we can see, because we've been through --

MR. SHUGARTS: Actual number, not percentage.

ATTY. NUZZO: I don't -- I don't -- the answer is, I do not know. All I do know is the entire work file of the -- of the transcripts and all the things dealing with the trials and the -- everything dealing with all that, all the doctor's reports and all the -- all that business were saved.

And -- but I -- but when we're looking for these -- as I said, we first came upon this in -- when -- in December 2014. And it would

just be the invoice. We didn't see anything else missing because we have looked at all the email traffic and all that business. So we didn't see anything else missing at that point.

ATTY. MOLINARO: So the only documents missing were these receipts?

ATTY. NUZZO: I'm sorry?

ATTY. MOLINARO: The only documents that were not scanned or saved are these receipts?

ATTY. NUZZO: That's -- that's what I understand to be the case based on the people talking to me about it. I mean, I didn't go and physically look myself to see, but it looks like we -- we -- we saved just about all of it.

And, you know, it's like anything else. I mean, I've been in practice 47 years. And I'm -- I'm hopeful that they get those banker boxes and they keep one percent in. And once that filed gets closed, it moves down the line.

And although I am responsible down the line and I know I'm responsible down the line, Francis Nicholson-Dare would tell me that if I was -- if she was standing next to me. I don't know exactly where.

And I apologize for not having a better -- I could probably try to get a better answer if you want it. I can talk to these people and give you that information, if you want.

But I -- I really don't have it as I'm standing here today.

MR. SHUGARTS: I -- I -- I think I would, actually. I -- I -- I would. I'd like to know, you know, are there other missing documents? Are -- are there other documents --

ATTY. NUZZO: Well, the only -- the only --

MR. SHUGARTS: -- missing in other cases?

ATTY. NUZZO: I'm sorry?

MR. SHUGARTS: Are there documents missing in any -- any other cases, or is it just this case?

ATTY. NUZZO: Well, I mean, I -- I -- I don't think it was -- was systemic. I -- I think that what happened is that the -- the system they put in place in 2000 was intended to capture all the documents, and -- and it wasn't -- and it wasn't intended to, basically, not capture all the documents.

In -- in this case, it -- it -- it happened. I don't think it's -- there was a

systemic process here that they were trying to not retain information. They know the importance of retaining information.

But as it relates to these costs, for example, obviously, which we're standing before you on, they didn't retain that information. And that's --

ATTY. MOLINARO: Is it your representation as an officer of the court that that's accurate to the best of your knowledge that the only documents missing are the receipts?

ATTY. NUZZO: The -- based on my talking with these people, yes, as an officer of the court.

ATTY. MOLINARO: Based on what you understand?

ATTY. NUZZO: Based on -- talking with the -- the staff there at the Koskoff firm, that's correct.

ATTY. MOLINARO: Okay.

ATTY. NUZZO: You know, I have no reason to believe otherwise. Do you have any other questions?

MR. SHUGARTS: Not -- not from me.

ATTY. NUZZO: If I could just -- and I'll be very short, can I just respond here?

ATTY. MOLINARO: Yeah. You'll be

permitted to make a brief closing statement, and then that concludes the presentation.

ATTY. NUZZO: All right.

ATTY. CARRASQUILLA: If I may --

ATTY. NUZZO: That -- that --

ATTY. CARRASQUILLA: -- I would also like an opportunity to respond.

ATTY. ALTSCHULER: And I have a comment about a missing document.

ATTY. MOLINARO: All right. So this is how this is gonna happen. Disciplinary Counsel, we're gonna give you five minutes. Attorney Altschuler --

ATTY. ALTSCHULER: Altschuler.

ATTY. MOLINARO: -- Altschuler, thank you, five minutes. And then we're gonna hear from the respondent's counsel as a final response.

ATTY. ALTSCHULER: We -- I realize you're volunteers, and we appreciate this.

ATTY. MOLINARO: It's okay.

ATTY. ALTSCHULER: Well, it's an interesting case.

ATTY. CARRASQUILLA: Thank you. Just -- I guess starting kind of in reverse order, in response to your concern, I think that that's really not within the scope of this grievance hearing, because it would be akin to asking

an attorney who's before you, let's say on not having a fee agreement with a client, to go through all of his files and see if there's fee agreements in every file or see if there's no fee agreements -- if there are fee agreements missing from every file. So that's my thought on that.

What I do agree completely with is Attorney Altschuler's statement is that this is an important matter. It's an important matter to Attorney Nastri. It's an important matter to the D'Attilos.

What I disagree with and what Attorney Altschuler has completely wrong is the statement that this is not about Kathleen Nastri. That's exactly what this hearing is about. It's about Kathleen Nastri and her conduct and whether or not it violated the Rules of Professional Conduct.

This is not about the Statewide Grievance Committee or anybody else making a statement or a policy statement or attempting to protect the system, as Attorney Altschuler has indicated. That's not what disciplinary matters are about.

Pursuant to the rule of the Statewide Grievance Committee, Rule of Procedure, law

firms can't be sued for -- I'm sorry -- law firms can't -- law firms can't be grieved. It has to be a particular lawyer, again, for the reason that the -- the purpose of these hearings is to look at the lawyer's conduct, the specific lawyer's conduct, and whether or not it violated the Rules of Professional Conduct.

So I think, again, that's completely incorrect, and this is about Kathleen Nastri and what she -- and what her conduct was in this matter.

As you can tell, just about all the facts in this case are in dispute. It is my burden to prove, in the event of a hearing by clear and convincing evidence any of the charges alleged.

Attorney Altschuler states that there was no investigation done and no questions, and he indicates certain questions that he would like to have had answered himself. Regardless of -- what he personally would like to have had answered is irrelevant.

I can assure the committee that there was an investigation done. There was a very detailed investigation done. There was a lot of time by myself spent on this file with

Attorney Altschuler with Attorney Nuzzo regarding all of the facts surrounding this case.

Attorney Altschuler mentions the *Parnoff* (phonetic) and the *Monahan* cases. Again, all of the cases are fact specific. They depend on specifically what the conduct was. And I am not -- I don't have complete familiarity with any of those cases, but, again, the attorney disciplinary process is fact specific to the cases and the conduct of the lawyer.

I would disagree also with Attorney Altschuler stating that this is a slap on the wrist. I don't think that reprimands are a slap on the wrist. They're permanent. They're forever on the lawyer's record. And I think as lawyers we all take a lot of pride in what we do.

So, again, I do request that the committee approve the proposed disposition as being a fair and equitable resolution of the issues.

ATTY. MOLINARO: Thank you.

ATTY. CARRASQUILLA: Thank you.

ATTY. ALTSCHULER: Just to address the document question --

ATTY. MOLINARO: Sure.

ATTY. ALTSCHULER: -- there actually are lots of questions about documents, and, for example, on page G 118 of the original complaint, there's a copy of the final settlement statement that was filed with the Northern Fairfield Probate Court.

And I've been in correspondence with Mr. Nuzzo about this, but I had asked for copies of all of the originals. So I got a copy of -- in color of the January 4th stipulations. I got a copy of the January 11th stipulation. I got a copy of the original retainer agreement that were all in color.

Now, this one is fuzzy. It's in -- basically, it's in black and white. The colored part is just a copy from the court. But the explanation that I received about this, why isn't there an original, and I was told there was no original -- is that because there was an email exchange where, supposedly, Cathy -- they were sent a copy of this via email. And Cathy D'Attilo sent it back to them, and they never had an original.

And I've never been -- been given a copy of that email exchange with the actual PDF that was received for -- just for an example.

This is an important document. The reason why this is an important document is because it's what was finally filed with the probate court. It's the only document that mentions Wood, LLP.

So Wood, LLP, is that tax firm that was hired. It says that they were paid on this -- let's see, I think it's -- I can't really read this -- oh, $2,923. In reality, if you look at the computer printout, they were paid close to $30,000.

ATTY. COUSINEAU: Are you indicating that this form was filed with the probate court?

ATTY. ALTSCHULER: Yes, it was.

ATTY. COUSINEAU: So they would have that -- they --

ATTY. ALTSCHULER: No, don't they have it. I've been to the probate court. There is no original. This is what's filed with the probate court.

ATTY. COUSINEAU: Right.

ATTY. ALTSCHULER: In other words, this one -- this fuzzy copy --

ATTY. COUSINEAU: Okay.

ATTY. ALTSCHULER: -- is filed with the probate court --

ATTY. COUSINEAU: Right.

ATTY. ALTSCHULER: -- and they've taken a picture of it from the probate court file. So when you ask the question about are there missing documents, they have a -- a claim about what happened with this document, but they haven't backed it up to actually prove it.

And why this is of concern is because if this is -- and there's other issues. I'm not gonna go into all the details about this document. I just wanted to flag for you that there's a real issue about this very important document that there is no original that's been turned over. They claim it never existed.

And I'll just point out that there's no original even though the D'Attilos -- this was filed in -- I forget the exact date. It's sometime in late May -- with the probate court. But it was filed after the D'Attilos went to the Koskoff office to pick up their check.

So if they had wanted an original when they picked up their check for $4 point something million, they could have had them sign an original, but they didn't.

I don't have the -- I -- I have theories

about what's going on with this, but there is the question about whether we've gotten all the documents. And -- and there's a whole pile of documents that they've told me that they have deliberately withheld, internal documents, internal emails.

I had asked Karyl Carrasquilla to get those. At first she told me she was going to get all the emails. She told me that in August, but then, for some reason, she changed her mind. So there are missing documents that I haven't gotten. And what's in those missing documents, I don't know.

So my -- my final comment about what -- unless you have a question.

ATTY. COUSINEAU: Well, even if Disciplinary Counsel got those records, I'm not sure you're entitled to them.

ATTY. ALTSCHULER: Yeah, it would be part of the record. I'm going to her office after this, and I'm gonna look at her file.

ATTY. COUSINEAU: Well, it wouldn't be part of our record?

ATTY. ALTSCHULER: It wouldn't, but I -- I would have had an opportunity to look at it before. But the question was, are there documents? Have they all been accounted for?

And the answer is no, including things other than just billing statements.

MR. SHUGARTS: Thank you very much.

ATTY. ALTSCHULER: Okay. I mean I just want to clarify.

MR. SHUGARTS: I appreciate that.

ATTY. COUSINEAU: Thank you.

ATTY. ALTSCHULER: And just -- and just a final comment about whether this is about Kathleen Nastri, I think the court cases are clear.

Obviously, you come in here. You look at each attorney, and you judge them. And you look at their record and how many reprimands that they've had. And, certainly, you figure out what to do on a case by case basis.

But the purpose, according to all the court cases I have read, is not to punish the offender. But it is to protect the system. So there's this dual purpose.

I don't think it's fair to say this is only about Kathleen Nastri, because when you look at all the appeals from grievances, they're gonna state time and time again it's really not to punish the individual, it's to protect the system.

So whatever you do here, they -- the

courts may not call it a punishment. We can call it whatever you want. But the reality is, it's still ultimately gonna be viewed by the court themselves. Let's say they appeal. As -- we have to protect the system, and it's not about punishing the individual.

And, therefore, for all the reason I talked about, for the fact the Chief Disciplinary Counsel recognizes that this is an important case, it shouldn't just be brushed under the rug with no hearing.

We think the hearing in this case is called for precisely because there are disputed facts. He says that all the facts are disputed. Well, that's not a reason to -- to let somebody off when there are millions of dollars of fees at stake, when the retainer agreement is black and white. It's clear as day that they took too much money when they have admitted they haven't tracked $600,000 or more of expenses.

And this whole -- I -- I -- I still don't understand. For some reason they mysteriously, over a period of nine years, every time an invoice came in for this case, they didn't scan it properly. Everybody else's cases, or maybe not, were scanned

properly. This is one -- wasn't invoices that appeared one day nine years ago, and we're asking them to produce the record. They had invoices from 2003, 4, 5, 6, 7, 8, 9, 10, 11, 12.

Every single year they would get an invoice, not one single person at that firm scanned any documents. Actually, we have the equivalent of about $7,000 that was scanned out of a total of $648,000. That's a big problem. That needs a new hearing, not just do -- do it better next time.

MR. SHUGARTS: Thank you.

ATTY. MOLINARO: Thank you.

ATTY. COUSINEAU: Thank you.

ATTY. MOLINARO: We'll hear from Attorney Nuzzo now.

ATTY. NUZZO: I'm not gonna go over every point -- point on this because I just want -- want to get to what I think is essential in terms of this hearing.

First of all, in terms of that issue of dealing with the -- putting the fee agreement in, you have our response on page 21. I won't go through that.

In terms of Foreman issues, I have a transcript of the actual testimony, that

Mr. Altschuler was -- which is relevant to this. And -- and attorney -- Mr. Foreman, who is the life-care planner, he's the fella who's testified in this case; and as a result of his testimony, they awarded Danny D'Attilo $8.6 million in life-care.

That estimate he gave, he also said I've got about 100 hours unbilled. I -- I -- you know, this -- this didn't do with the first trial. He was on the first trial and the second trial. So this bill is something like close to $80,000. And the last bill, the left over bill, the end -- the one we paid at the end, which is part of this accounting -- this $600,000 was -- cost 53,000.

Back in May, we sent that check to Mr. Altschuler. Here it is $68,712.92, check number 86337. The only time we're hearing that it's a phony check or a phony payment is right now.

What he does is -- he's done it in a lot of this case, is he, basically, wants to pick out something he thinks is helpful and just publishes it anywhere he wants. If you want a copy of the transcript, you can judge for yourself. We'll give you the transcript. You can see that Mr. Foreman is not saying

that the bill in this case is $25,000. He says I don't know. I'm estimating. He -- he -- he says that right in the -- in the transcript.

But I think the -- probably, the most important thing is that all of these things he's concerned about: the fraud, the things he's complaining, the things he writes to the press, to the Attorney General, to anyone he can find, suing all these people, it's all about the same thing. It's all gonna be decided in arbitration. The D'Attilos will have their day in Court.

The reason we're not in arbitration is not because of some motion. I asked for arbitration in January of 2015. He's been giving us nothing but double talk since that time. Judge Frechette asked him on the record, Will you go to arbitration? That was in February of 2015. He couldn't answer the question a straight way.

The D'Attilos are not in court on their arbitration because he doesn't understand the difference between a restricted and unrestricted arbitration. In an arbitration setting, where it's unrestricted --

ATTY. MOLINARO: Attorney Nuzzo --

ATTY. NUZZO: I'm sorry. I'll leave it --

ATTY. MOLINARO: -- you're going way off track.

ATTY. NUZZO: -- alone. I'll leave it alone.

ATTY. MOLINARO: Okay.

ATTY. NUZZO: Probably --

ATTY. MOLINARO: Thank you.

ATTY. NUZZO: -- the last thing I want to comment on is very important because it goes to the heart of -- of all of this and all of his comments. I heard a lot about Mark Greany today about -- I think he said, and we have a transcript of it, that he had nothing to do with the retainer agreement. And who is this person that wrote -- who is this person that talked to Mr. Altschuler that said, As a favor to the relative, the attorney contacted the Koskoff firm, which then agreed to significantly reduce its' fee by applying the sliding scale and remove the waiver.

So if Attorney Greany wasn't that person, then who was this person? They're either -- either another lawyer said that the -- that the -- that the housekeeper did -- or it's Mr. Altschuler's imagination.

And I say that not -- I say that in all sincerity. I don't say that to be rough or course or anything. The point being is that he's talked a lot about Mark Greany and about all this other stuff, and -- and if that's true, then where'd he get this allegation?

What Judge Freschette said, and it's in your documents, it's exhibit number M. It's the transcript from Judge Freschette. He said, You can't come to court with the agreement and -- and say, I prevail. You have to come in with evidence. It's exhibit number K. Excuse me. I said J. It's K.

You can't come to court, this is what the judge said in court, you have to put on evidence. And in the next page he says -- and he says, Or I can just come with the -- the agreement. And the Judge say, No, you cannot.

That's the point of this whole case. He wants to make a case based on his interpretation of that fee agreement. The whole case is based on his interpretation of the fee agreement, when he got this case around 2014. It's not based on evidence. And that's -- that's the problem with all of this.

And I apologize for speaking loudly. I -- by the way, I've never been in a 282 hearing like this before. Mine usually last about a half an hour. I do appreciate your time, and -- and -- and I -- I -- I wish you the best. And do what you think is right. Obviously, your interest is the State of Connecticut. You're volunteers, and I do very much appreciate at least listening to us and being -- allowing us to speak -- speak our mind about what's going on. Thank you.

MR. SHUGARTS: Thank you very much.

ATTY. MOLINARO: Thank you.

ATTY. COUSINEAU: Thank you.

MR. SHUGARTS: Appreciate it.

ATTY. DOWD: Thank you. The committee will take the agreement under consideration and will issue a decision either accepting or rejecting the agreement and a written letter regarding their decision will be mailed to the parties within 60 days of the close of this hearing. Thank you.

ATTY. CARRASQUILLA: Thank you.

ATTY. ALTSCHULER: Thank you.

ATTY. COUSINEAU: Thank you.

ATTY. MOLINARO: Thank you.

(The matter was concluded.)

NO: #15-0137	:	SUPERIOR COURT
CATHY D'ATTILO	:	JUDICIAL DISTRICT OF HARTFORD
v.	:	AT HARTFORD, CONNECTICUT
KATHLEEN NASTRI	:	FEBRUARY 4, 2016

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Hartford, Hartford, Connecticut, before the Statewide Grievance Committee, on the 4th day of February, 2016.

Dated this 9th day of February, 2016, in Hartford, Connecticut.

Kari Watford
Court Recording Monitor

(b) In any such contingency fee agreement such fee shall be the exclusive method for payment of the attorney by the claimant and shall not exceed an amount equal to a percentage of the damages awarded and received by the claimant or of the settlement amount received by the claimant as follows: (1) Thirty-three and one-third per cent of the first three hundred thousand dollars; (2) twenty-five per cent of the next three hundred thousand dollars; (3) twenty per cent of the next three hundred thousand dollars; (4) fifteen per cent of the next three hundred thousand dollars; and (5) ten per cent of any amount which exceeds one million two hundred thousand dollars.

State of Connecticut
Court of Probate
District of Northern Fairfield County (PD45)

In re.: Daniel Jacob D'Attilo, a Minor

Application to Compromise a Doubtful or Disputed Claim

April 2, 2012

The Subscribers represent:

1. Cathy D'Attilo and Domenic D'Attilo are the proposed Guardians of the Estate of their son, Daniel Jacob D'Attilo, a minor.

2. Said Guardianship Estate has a doubtful and disputed claim or action against Richard Viscarello, M.D., Maternal-Fetal Care, PC and Stamford Hospital (hereinafter sometimes collectively referred to as "Defendants") for alleged professional negligence. A civil action, known as Daniel Jacob D'Attilo ppa Cathy D'Attilo and Domenic D'Attilo and Cathy D'Attilo and Domenic D'Attilo, Individually v. Richard Viscarello, Maternal-Fetal Care, PC and Stamford Hospital, Docket No. X10 UWY-CV-05-4010135 S, is pending in the Connecticut Superior Court for the Judicial District of Waterbury at Waterbury. A copy of the underlying Fifth Revised Complaint is attached hereto as Exhibit A.

3. As a result of the alleged professional negligence of said Defendants, Daniel Jacob D'Attilo allegedly was caused to suffer severe, serious, painful and permanent injuries all as fully set forth in the pleadings filed in said civil action.

4. Richard Viscarello, M.D., Maternal-Fetal Care, PC and Stamford Hospital are willing to pay $25,000,000.00 to settle the claims of Daniel Jacob D'Attilo and the separate claims of his parents, Cathy D'Attilo and Domenic D'Attilo (hereinafter sometimes referred to as "Proposed Settlement").

5. After deduction of attorneys' fees and expenses associated with this matter, and the net amount attributable to the claims of Cathy D'Attilo and Domenic D'Attilo, the net payment to Daniel Jacob D'Attilo's Guardianship Estate will be approximately $9,823,000 in cash plus a $3,000,000 Structured Settlement payable at an estimated initial rate of $10,893.54 per month for life, guaranteed for 30 years and continuing for the life of Daniel Jacob D'Attilo, increasing at 3% per annum, compounded annually, beginning on February 2, 2024. A copy of the Settlement Statement prepared by Koskoff, Koskoff & Bieder, P.C., is attached hereto as Exhibit B. A copy of the proposed structure illustration estimate is attached hereto as Exhibit C.

Substitute Senate Bill No. 1052

Public Act No. 05-275

AN ACT CONCERNING MEDICAL MALPRACTICE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 52-251c of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage and applicable to causes of action accruing on or after said date*):

(a) In any claim or civil action to recover damages resulting from personal injury, wrongful death or damage to property occurring on or after October 1, 1987, the attorney and the claimant may provide by contract, which contract shall comply with all applicable provisions of the rules of professional conduct governing attorneys adopted by the judges of the Superior Court, that the fee for the attorney shall be paid contingent upon, and as a percentage of: (1) Damages awarded and received by the claimant; or (2) the settlement amount received pursuant to a settlement agreement.

(b) In any such contingency fee **[**arrangement**]** agreement such fee shall be the exclusive method for payment of the attorney by the claimant and shall not exceed an amount equal to a percentage of the damages awarded and received by the claimant or of the settlement amount received by the claimant as follows: (1) Thirty-three and one-third per cent of the first three hundred thousand dollars; (2) twenty-five per cent of the next three hundred thousand dollars; (3) twenty per cent of the next three hundred thousand dollars; (4) fifteen per cent of the next three hundred thousand dollars; and (5) ten per cent of any amount which exceeds one million two hundred thousand dollars.

(c) Notwithstanding the provisions of subsection (b) of this section, a claimant may waive the percentage limitations of said subsection if the claim or civil action is so substantially complex, unique or different from other wrongful death, personal injury or property damage claims or civil actions as to warrant a deviation from such percentage limitations. Factors that may indicate that a claim or civil action is substantially complex, unique or different from other wrongful death, personal injury or property damage claims or civil actions include, but are not limited to, if the claim or civil action (1) involves complex factual medical or legal issues, (2) involves serious permanent personal injury or death, (3) is likely to require extensive investigation and discovery proceedings, including multiple depositions, or (4) requires independent expert witness testimony. For the purposes of this subsection, "independent

expert witness testimony" means testimony, whether at trial or in a deposition, from an expert who has not participated in the care of the claimant and has not participated in any official investigation of the incident involved.

(d) Prior to a claimant entering into a contingency fee agreement that provides for a fee that exceeds the percentage limitations of subsection (b) of this section, the attorney shall (1) explain the percentage limitations of subsection (b) of this section to the claimant and the reasons the attorney is unable to abide by those limitations; (2) advise the claimant of the claimant's right to seek representation by another attorney willing to abide by the percentage limitations of subsection (b) of this section; and (3) allow the claimant a sufficient period of time to review the proposed contingency fee agreement and, if the claimant wishes, seek representation by another attorney prior to entering into such agreement.

(e) No waiver of the percentage limitations of subsection (b) of this section shall be valid unless the contingency fee agreement (1) is in writing, (2) sets forth in full the fee schedule of subsection (b) of this section, (3) contains a conspicuous statement, printed in boldface type at least twelve points in size, in substantially the following form: "I UNDERSTAND THAT THE FEE SCHEDULE SET FORTH IN SECTION 52-251c OF THE CONNECTICUT GENERAL STATUTES LIMITS THE AMOUNT OF ATTORNEY'S FEES PAYABLE BY A CLAIMANT AND THAT THE STATUTE WAS INTENDED TO INCREASE THE PORTION OF THE JUDGMENT OR SETTLEMENT THAT WAS ACTUALLY RECEIVED BY A CLAIMANT. NOTWITHSTANDING THAT THE LEGISLATIVE INTENT IN ENACTING THAT FEE SCHEDULE WAS TO CONFER A BENEFIT ON A CLAIMANT LIKE MYSELF, I KNOWINGLY AND VOLUNTARILY WAIVE THAT FEE SCHEDULE IN THIS CLAIM OR CIVIL ACTION.", and (4) is signed and acknowledged by the claimant before a notary public or other person authorized to take acknowledgments.

(f) If a claimant waives the percentage limitations of subsection (b) of this section pursuant to this section, in no event shall (1) the total fee under the contingency fee agreement exceed thirty-three and one-third per cent of the damages awarded and received by the claimant or of the settlement amount received by the claimant, and (2) the claimant be required to repay any costs that the attorney incurred in investigating and prosecuting the claim or civil action if there is no recovery.

(g) No fee shall be payable to any attorney who seeks a fee that exceeds the percentage limitations of subsection (b) of this section unless the claimant has waived such limitations pursuant to this section and the contingency fee agreement complies with the requirements of subsection (e) of this section.

[(c)**]** (h) For the purposes of this section, "damages awarded and received" means in a civil action in which final judgment is entered, that amount of the judgment or amended judgment entered by the court that is received by the claimant; **[**, except that in a civil action brought pursuant to section 38a-368 such amount shall be reduced by any basic reparations benefits paid to the claimant pursuant to section 38a-365; **]** "settlement amount received" means in a claim or civil action in which no final judgment is entered, the amount received by the claimant pursuant to a settlement agreement; **[**, except that in a claim or civil action brought pursuant to

section 38a-368 such amount shall be reduced by any basic reparations benefits paid to the claimant pursuant to section 38a-365;] and "fee" shall not include disbursements or costs incurred in connection with the prosecution or settlement of the claim or civil action, other than ordinary office overhead and expense.

[(d) For the purposes of this section, "medical malpractice claim or civil action" means a claim or civil action brought to recover damages resulting from personal injury or wrongful death, whether in tort or in contract, in which it is alleged that such injury or death resulted from the negligence of a health care provider, and "health care provider" means a provider, as defined in subsection (b) of section 20-7b, or an institution, as defined in section 19a-490.]

Howard Altschuler

From: Carrasquilla, Karyl <Karyl.Carrasquilla@jud.ct.gov>
Sent: Thursday, February 11, 2016 12:49 PM
To: Howard Altschuler
Subject: D'Atillo v. Nastri

The Statewide Grievance Committee has rejected the proposed agreement.
I just received the notice.
Karyl L. Carrasquilla