

1 BEFORE THE NEW YORK STATE SENATE
2 STANDING COMMITTEE ON JUDICIARY

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4 Public Hearing on the
5 Appellate Division First Department
6 Departmental Disciplinary Committee,
7 the Grievance Committees of the
8 Various Judicial Districts, and the
9 New York State Commission on Judicial Conduct

8 Hearing Room 6
9 Empire State Plaza
Albany, NY

10 June 8, 2009
11 10:35 a.m.

12 PRESIDING:

13 Senator John Sampson
14 Chair
Senate Standing Committee on Judiciary

15 PRESENT:

16 Senator John A. DeFrancisco (R)
17 Senator Bill Perkins
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1 one case for 20 years.

2 If you have -- in our case, I'm dealing
3 with Surrogate's Court. If you have
4 numerous proceedings, let everything go into
5 Supreme Court; dispose of the Surrogate's
6 Court.

7 Let everything be assigned by a blind
8 rotating calendar of judges. Let the
9 proceedings be separated so that each
10 proceeding is going to get a different judge
11 and a different hearing.

12 And there has to be something to ensure
13 that money is not passed from one side to
14 the other or that one side alone is funded.
15 There has to be an enforcement of the
16 Constitution that all people have equal
17 rights before the law.

18 Thank you.

19 CHAIRMAN SAMPSON: Ms. Carvel, thank
20 you very much.

21 The next witness -- and I'm going to
22 adhere to the five-minute rule -- is Paul
23 Altman. Mr. Altman, are you here?

24 MR. ALTMAN: Yes, Senator.

1 CHAIRMAN SAMPSON: How are you doing,
2 Mr. Altman? That's a very extensive -- I'm
3 quite sure you can adhere to the five-minute
4 rule.

5 MR. ALTMAN: Well, what I'm going to
6 do is totally let you off the hook with all
7 those exhibits, now that I see how this
8 works.

9 CHAIRMAN SAMPSON: Thank you.

10 MR. ALTMAN: I didn't come in to
11 trash any personalities. I've never met
12 anybody in the room before. I'm not part of
13 any group. I am a 54-year-old guy who lives
14 in Florida. I was a jazz musician in New
15 York. And I have run afoul of the system.

16 And my life has been turned into a
17 nightmare, which I'm going to tell you in
18 the hundred-second version. And the DDC has
19 stood down and allowed an unethical attorney
20 to torment me. And I will leave it to you
21 to decide whether I'm just a disgruntled
22 litigant or whether I have something valid
23 to say. Okay?

24 Here's my story in a nutshell. This

1 has been going on for eight years. I'm
2 going to try to give you the 120-second
3 version, Senator. What happened to me is
4 that I have a child who's now 15. In 2001,
5 there was Family Court issues; I hired an
6 attorney, Richard L. Gold, of Morelli &
7 Gold. You can imagine that I'm not in love
8 with him, or I wouldn't be here talking
9 about this. But I'll spare you a character
10 assassination and try to stick to the facts.

11 In 2006, after four years of Family
12 Court, my relationship with him soured, and
13 I owed him \$20,000. A fee dispute ensued,
14 and I took advantage of the Part 137 law --
15 in New York State, 22 NYCRR 137 -- which
16 allows for mandatory arbitration if the
17 client demands it. And I demanded it. I
18 did not want to go to trial. I live in
19 Florida, I'm not an attorney.

20 The arbitrators hated Mr. Gold, and
21 they told him not only to waive the \$20,000
22 that I allegedly owed him, but they told him
23 to refund an additional \$5,000. And Mr.
24 Gold did not do so. I called the

1 Disciplinary Committee, and I said, "This
2 man has my money." And the Disciplinary
3 Committee said, "This is a concern for us,
4 please make a complaint." And I did.

5 And at that time what happened is
6 that -- well, I don't want to get into all
7 the details because it will be an hour, so
8 I'm going to try to keep it to five minutes.
9 What happened in a nutshell is that
10 Mr. Gold's retainer said that should there
11 ever be a fee dispute and should Altman
12 choose arbitration as is his right pursuant
13 to New York law, that arbitration will be
14 binding upon Altman and the firm.

15 Well, Gold sued me in Supreme Court of
16 New York. And I will quickly get to the
17 DDC's role in this, but give me a little
18 leeway to tell the story, okay? Gold sued
19 me and asked the Supreme Court to award him
20 \$35,000. I, who am not a lawyer, made a
21 motion to dismiss pre-answer and said, "Your
22 Honor, this is an illegal and unethical
23 misuse of the Supreme Court. There's
24 already been an arbitration, and here is

1 Gold's retainer agreement, and it clearly
2 says the arbitration is binding."

3 Well, Gold made opposition to this, and
4 he said, yeah, the word "binding" was in the
5 retainer agreement, but it was a special use
6 of the word that meant "nonbinding."

7 (Laughter.)

8 MR. ALTMAN: now, the judge did not
9 buy this, but on June 30, 2008, in a
10 landmark decision which is featured on the
11 front of the *New York Law Journal*, with the
12 judge's photograph, Justice Carol Robinson
13 Edmead ruled that although the word
14 "binding" is suggestive of binding, that
15 Gold was free to vacate the \$25,000 award
16 and start an entirely new trial and drag me
17 to New York.

18 I would never have hired him if I had
19 known that the retainer was a trick.

20 And she ruled that the reason for this
21 is because Gold himself had not used a
22 super-secret Boy Scout-password-encoded form
23 from the Office of Court Administration that
24 I, as an unrepresented consumer, could have

1 known nothing about.

2 Well, the DDC stood down on this. I
3 laid it all out to the DDC. I've given you
4 the exhibits, which I cannot drag you
5 through in five minutes, and I will
6 mercifully not --

7 CHAIRMAN SAMPSON: But this was a --
8 I guess was a judge's determination with
9 respect to --

10 MR. ALTMAN: It was a judge's
11 determination after the DDC -- I'm telling
12 the five-minute version, so I'm a little out
13 of sequence -- after the DDC stood down and
14 said there appears to be pending litigation
15 on this matter.

16 Well, I wrote back to the DDC and said:
17 Look, I know there's pending litigation.
18 That's part of my complaint. This is an
19 unethical litigation. And you guys have all
20 the jurisdiction in the world to deal with
21 this here and now, before the litigation
22 goes on.

23 I cannot quote you chapter and verse,
24 Senator, but the DDC's rules say that they

1 can pursue issues even if there's pending
2 litigation, that they are not hamstrung by
3 the fact that there's pending litigation.

4 CHAIRMAN SAMPSON: So the DDC did not
5 investigate because there was a pending
6 litigation?

7 MR. ALTMAN: Correct. They closed
8 down. They closed the investigation. And I
9 wrote to them and I said, With all due
10 respect, if you close every ethics
11 investigation that has pending litigation
12 corresponding -- at the same time, what
13 you're doing is creating a rule so that
14 attorneys who are accused of an ethics
15 violation must bring lawsuit against the
16 client who accused them. Because that's the
17 automatic the DDC will stand down.

18 And if the attorney is unethical enough
19 to keep playing this game in a law of
20 attrition and finally wear the client down,
21 as Richard Gold is trying to do to me, well,
22 then he wins. The DDC does not find this to
23 be unethical.

24 Now, the DDC's own rules forbid what

1 Gold did. Gold, as a matrimonial attorney,
2 is not allowed to have trick wording in a
3 retainer agreement regarding fee
4 arrangements. Now, I'm not going to quote
5 chapter and verse that attorneys cannot lie
6 to clients and they have a fiduciary
7 relationship. Let's put all that aside.
8 The specific rules of the DDC say -- or the
9 ethics rules say that a matrimonial attorney
10 must set forth the fee arrangements in the
11 retainer agreement in plain language.

12 Now, how on earth is "binding" meaning
13 "nonbinding" in plain language?

14 CHAIRMAN SAMPSON: So the DDC never
15 took any action?

16 MR. ALTMAN: The DDC never took any
17 action.

18 So now I will try to give you the punch
19 line. Only did it later turn out that the
20 form was never even available, the website
21 that the form was supposedly on wasn't
22 available, but I made a reply to Gold's DDC
23 opposition which was substantially the same
24 as what he made in court. He said, Yeah,

1 binding, but it meant nonbinding.

2 So what I did is I said okay, let him
3 have that. What about the fact that he lied
4 in court? He took me into the wrong court,
5 he perjured himself. Here are the
6 transcripts. What about the fact that he
7 puffed up the bill and then knocked it down
8 with courtesy discounts and then went after
9 those courtesy discounts when he found out I
10 wasn't happy with his services? I could go
11 on with two or three more examples. The DDC
12 never submitted these allegations to Gold.

13 So here's -- here are the four ways
14 that the DDC specifically stonewalled me and
15 whitewashed the case, which is supposedly
16 still pending. My litigation in New York is
17 still pending in front of Justice Edmead.
18 It has turned my life upside down.

19 But to be precise, the DDC, the first
20 thing they did is they wrote me a letter
21 saying there's pending litigation so we're
22 closing the case. And as I said earlier,
23 that does not follow their rules.

24 Second, they did not tell me the case

1 could be reconsidered. Their rules require
2 that they notify me of this.

3 Third, they said that there was pending
4 litigation in related matters. That was not
5 true. Okay?

6 And fourth, to this day I have been in
7 touch with Sherry Cohen, who has told me
8 that the reconsideration is still pending,
9 and to this day they have never submitted
10 the additional allegations to Attorney Gold.

11 AUDIENCE MEMBER: Where are the other
12 two senators?

13 CHAIRMAN SAMPSON: Basically, the
14 other two senators had commitments. This
15 is -- my colleagues come in and out because,
16 you know, this is during the day we have
17 other committee meetings and everything else
18 going on.

19 So you have the chairperson here
20 who's -- I'm in charge of the committee. So
21 as long as I don't leave, you're all right.

22 MR. ALTMAN: Well, I want to take
23 second to apologize to the audience. I am a
24 little heated, and I am trying as best as

1 possible to knock an eight-year story down
2 to a few seconds.

3 CHAIRMAN SAMPSON: Mr. Altman, no,
4 no, no, I understand it. And this is
5 something, since your litigation is still
6 pending and something like this can be
7 reconsidered, so I will make sure that we
8 follow up with you in the near future with
9 respect to the complaint that you have filed
10 with the DDC.

11 MR. ALTMAN: Senator, again, I won't
12 drag you through the exhibits, but in the
13 exhibits you will see that the DDC has
14 written to me and said that there was
15 nothing legitimate -- nothing worthwhile to
16 send to Gold.

17 CHAIRMAN SAMPSON: Well, that's
18 something that maybe since we have the
19 members of the DDC here, the First
20 Department, that's something that maybe we
21 can -- you know, maybe I can ask them in a
22 subsequent environment.

23 Just for complete disclosure, I used to
24 work for Justice Edmead about 20 years ago.

1 MR. ALTMAN: Well, I don't agree with
2 her decision. She knows that. I'm quoted
3 as saying so in the *New York Law Journal*. I
4 think this was a mistake, and I am dealing
5 with her, respectfully, in the court, with
6 motions and what have you. And I hope that
7 she ends up agreeing with me, and I hope my
8 ex-wife ends up agreeing with me about a few
9 things too.

10 But I would like to just make one more
11 comment, if I may, and then I will take any
12 comments you have or stand down. I did not
13 come here with an ax to grind. I don't know
14 anybody here. But I was deeply offended,
15 personally offended by Mr. Gold and
16 Mr. Friedberg. I walked in listening to
17 them.

18 And I find it outrageous that these
19 people, who know the system better than
20 anybody else, and deserve every benefit of
21 the doubt and should not be the victims of
22 character assassination, that these people
23 do not come forward and say to you:
24 Senator, obviously, with the amount of power

1 we have and the amount of opaqueness that
2 our agency has, this is a perception
3 problem, even though we personally behave in
4 a saintlike way.

5 These should be the people who are
6 advising you on how to fix the problem. And
7 the fact that they are not I find deeply
8 offensive, and I personally feel very
9 suspicious of them.

10 CHAIRMAN SAMPSON: Well, I don't
11 think, Mr. Altman -- this is why we are
12 having these proceedings. They did come
13 forward. They expressed -- now you
14 expressed your belief. And this is why we
15 have these hearings, so we can get to the
16 bottom of this.

17 MR. ALTMAN: Thank you.

18 CHAIRMAN SAMPSON: Thank you very
19 much, Mr. Altman.

20 The next witness is Luisa Esposito, of
21 West Hempstead, New York.

22 MS. ESPOSITO: Good afternoon.

23 CHAIRMAN SAMPSON: Good afternoon.

24 MS. ESPOSITO: My name is Luisa