

STATEWIDE GRIEVANCE COMMITTEE

Joan Cain  
Complainant

:

vs.

:

Grievance Complaint #07-0383

Michael P. Gannon  
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, 300 Grand Street, Waterbury, Connecticut on November 6, 2007. The hearing addressed the record of the complaint filed on April 18, 2007, and the probable cause determination filed by the Ansonia/Milford Judicial District Grievance Panel on August 14, 2007, finding that there existed probable cause that the Respondent violated Rules 1.15(b) and 8.4(4) of the Rules of Professional Conduct.

Notice of the hearing was mailed to the Complainant, to the Respondent, and to the Office of the Chief Disciplinary Counsel on September 28, 2007. Pursuant to Practice Book §2-35(d), Chief Disciplinary Counsel Mark Dubois pursued the matter before this reviewing committee. The Complainant appeared at the hearing and testified. The Respondent did not appear at the hearing. At the hearing, this reviewing committee advised the parties that the grievance panel's reference to Rule 1.15(b) in its August 10, 2007 probable cause determination appeared to be a typographical error, since the panel stated that its probable cause finding related to the Respondent's failure to provide a written fee agreement. The failure to provide a written fee agreement is a violation of Rule 1.5(b) and not Rule 1.15(b). Accordingly, this reviewing committee reviewed and decided this case under Rule 1.5(b).

Reviewing committee member Mr. William Carroll was not available for the hearing. The Disciplinary Counsel, however, waived the participation of Mr. Carroll in this matter and agreed to have the undersigned render this decision.

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

On or about March 15, 2007, Adriana Shell met with the Respondent at Waterbury Superior Court regarding representation of the Complainant's son, Maurice Burros, in a criminal matter. Ms. Shell, Mr. Burros' girlfriend, advised the Respondent that Mr. Burros was being detained in New York in connection with a Connecticut arrest warrant. The Respondent requested

\$1,500 to represent Mr. Burros. The Complainant, who was providing the retainer, was unable to pay the full \$1,500 retainer. The Respondent agreed to accept \$500 to start the case and provided Ms. Shell with a handwritten receipt dated March 15, 2007 indicating that Maurice Burros paid \$500 to the Respondent.

Mr. Burros was eventually returned to Connecticut and appeared in court. The Respondent, however, arrived after Mr. Burros' arraignment. A public defender was thereafter appointed to represent Mr. Burros. The Respondent met with Mr. Burros and agreed to refund the \$500 retainer.

On or about March 28, 2007, Ms. Shell met with the Respondent regarding the return of the retainer. The Respondent advised that he would mail the retainer to the Complainant. Failing to receive the refund, the Complainant left several messages with the Respondent's office. After receiving no response from the Respondent, the Complainant filed this grievance complaint.

In an answer to the grievance complaint dated June 20, 2007, the Respondent stated that, "I am sending a refund check to Ms. Cain." The Complainant testified at the hearing that she has not received a refund from the Respondent.

This reviewing committee concludes by clear and convincing evidence that the Respondent engaged in unethical conduct. The record before this reviewing committee clearly indicates that the Respondent undertook the representation of the Complainant's son and received an initial retainer of \$500. The Respondent, however, never provided a written fee agreement outlining the scope of his representation or the basis or rate of his fee. The handwritten receipt provided by the Respondent does not satisfy the requirements of Rule 1.5(b). We conclude that the Respondent's failure to provide a written fee agreement violates Rule 1.5(b) of the Rules of Professional Conduct.

This reviewing committee also concludes that the Respondent violated Rule 8.4(4) of the Rules of Professional Conduct. In his answer to the grievance panel, the Respondent represented that he was sending a refund check to the Complainant. The Complainant testified at the hearing, however, that she never received a refund check from the Respondent. This reviewing committee finds that the Respondent's failure to provide the refund as he represented constitutes conduct prejudicial to the administration of justice, in violation of Rule 8.4(4) of the Rules of Professional Conduct.

This reviewing committee concludes that the Respondent's violation of Rules 1.5(b) and 8.4(4) of the Rules of Professional Conduct warrants a presentment to the Superior Court. Accordingly, we direct the Disciplinary Counsel to file a presentment against the Respondent in Superior Court pursuant to Practice Book §2-34A(b)(6), for the imposition of whatever discipline is deemed appropriate.

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Attorney David Channing

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Attorney Shari Bornstein