

STATEWIDE GRIEVANCE COMMITTEE

Mavis Farmer  
Complainant

:

vs.

:

Grievance Complaint #07-1184

Joseph Moniz  
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, 235 Church Street, New Haven, Connecticut on June 4, 2008. The hearing addressed the record of the complaint filed on December 5, 2007, and the probable cause determination filed by the Hartford Judicial District Grievance Panel for Geographical Area 13 and the town of Hartford on March 18, 2008, finding that there existed probable cause that the Respondent violated Rules 1.3, 1.4, 1.5, 1.15(a), 8.1(2) and 8.4(3) of the Rules of Professional Conduct and Practice Book §2-32(a)(1).

Notice of the hearing was mailed to the Complainant, to the Respondent and to the Office of the Chief Disciplinary Counsel on April 29, 2008. Pursuant to Practice Book §2-35(d), Assistant Disciplinary Counsel Suzanne Sutton pursued the matter before this reviewing committee. The Complainant and the Respondent appeared at the hearing and testified. This reviewing committee also heard testimony from Ms. Peggy Hydock, the Complainant's daughter, who was called as a witness by the Assistant Disciplinary Counsel. No exhibits were admitted into evidence.

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

On February 28, 2006, the Complainant retained the Respondent to represent her son, John Farmer, in connection with Mr. Farmer's criminal conviction. The Complainant paid the Respondent a flat fee of \$25,000 for the representation. The Respondent, thereafter, met with Mr. Farmer on March 22, 2006 and determined that he would initially investigate whether new evidence existed to support a motion for new trial. If a motion for new trial was not successful, the Respondent agreed to file an appeal. The Respondent agreed to file a habeas corpus action if these two options did not result in a favorable decision for Mr. Farmer.

The Respondent hired an investigator to locate and interview two new witnesses in support of a motion for new trial. After meeting with one of the witnesses, the Respondent determined that the evidence did not support a motion for new trial. The Respondent, thereafter, contacted the public defender that represented Mr. Farmer in the criminal

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proceeding and requested that he order a copy of the transcripts so that the Respondent could pursue the appeal which had been filed by the public defender.

In September of 2006, the Complainant became unhappy with the lack of progress on her son's case and terminated the Respondent's representation and requested a full refund of the retainer. The Respondent subsequently met with Mr. Farmer in October of 2006 and confirmed the termination of his representation. Four months later, by letter dated February 27, 2007, the Respondent sent the Complainant a partial refund of \$10,000 and stated that he would send the remainder to the Complainant. Failing to receive the balance of the retainer or a return telephone call from the Respondent, the Complainant sent a certified letter to the Respondent on June 4, 2007 requesting the \$15,000 balance plus interest. The Complainant continued calling the Respondent regarding the status of the refund. The Respondent, however, would not respond to the Complainant's telephone calls. The Complainant eventually was able to speak with the Respondent in August of 2007 and he advised that he would send the remaining \$15,000 to the Complainant. The Respondent, however, only sent the Complainant a check for \$5,000 in August of 2007. After several more telephone calls from the Complainant, the Respondent sent another check for \$5,000 in September of 2007. The Complainant continued to telephone the Respondent regarding the \$5,000 balance. The Respondent, however, failed to provide the Complainant with the balance of the retainer causing her to file this grievance complaint.

On December 7, 2007, a copy of the grievance complaint was sent by certified mail to the Respondent's law office at 100 Allyn Street in Hartford, Connecticut. On January 14, 2008, the grievance complaint was returned unclaimed to the Statewide Grievance Committee. Thereafter, on January 16, 2008, the grievance complaint was sent by regular mail to the Respondent at the same address and was not returned. The Respondent was given thirty days to respond to the grievance complaint. The Respondent, however, failed to do so.

This reviewing committee also considered the following:

The Respondent testified that he never pursued the appeal on behalf of Mr. Farmer because he did not receive the transcripts prior to his termination. The Respondent maintained that when he met with Mr. Farmer in October of 2006 regarding his termination, Mr. Farmer advised him to return \$15,000 of the retainer to the Complainant. The Respondent testified that when he received the retainer from the Complainant he placed the funds in his clients' funds account. The Respondent further stated that he was unable to timely refund the retainer because he did not have the money to do so. At the hearing before this reviewing committee, the Respondent testified that despite the agreement he had with Mr. Farmer, he was willing to return the \$5,000 balance to the Complainant and indicated that he would do so by the end of the following week. By letter

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dated June 25, 2008, Disciplinary Counsel's office advised that the Respondent had not refunded the balance of the retainer to the Complainant as represented.

The Respondent acknowledged receiving the grievance complaint, but maintained that his failure to respond to the grievance complaint was due to the lack of support staff in his office and the relocation of his office from the second to the third floor on Allyn Street in September of 2008. The Respondent contended that in September 2007 he became affiliated with the law firm of Lewis & Mundy and that the firm was supposed to hire office staff for the Respondent, but failed to do so. The Respondent testified that he had no clerical staff and no associates. The Respondent advised that he has recently hired a law school student to assist him in research and writing.

The February 28, 2006 written fee agreement provided to the Complainant by the Respondent is written on "Moniz & Associates" letterhead as is the Respondent's February 27, 2007 letter to the Complainant.

This reviewing committee concludes by clear and convincing evidence that the Respondent engaged in unethical conduct. The record before this reviewing committee indicates that the Respondent charged the Complainant a flat fee of \$25,000 to represent her son. The Respondent testified that he placed the \$25,000 fee in his clients' funds account. However, when the Complainant terminated the Respondent's representation in September of 2006, the Respondent was unable to refund any of the retainer to the Complainant because he had removed all of the funds from his clients' funds account. It is the position of this reviewing committee that although the \$25,000 fee was a flat fee, the Respondent needed to safeguard the funds in his clients' funds account and withdraw them as earned. The Respondent's inability to refund any portion of the \$25,000 retainer upon his termination and prior to filing any of the three matters he was retained for, supports a finding by clear and convincing evidence that the Respondent failed to safeguard the Complainant's funds and keep them separate from the Respondent's own property in violation of Rule 1.15(a) (now 1.15(b)) of the Rules of Professional Conduct.

This reviewing committee further concludes that the Respondent repeatedly advised the Complainant that he would refund the entire retainer, but to date has failed to do so. We find the Respondent's repeated misrepresentations to the Complainant constitute a violation of Rule 8.4(3) of the Rules of Professional Conduct.

With respect to the Respondent's failure to respond to the grievance complaint, this reviewing committee finds that the Respondent failed to establish good cause for his failure to do so. The Respondent acknowledged receiving a copy of the grievance complaint. This reviewing committee does not find that the Respondent's lack of support staff and office relocation constitute good cause for his failure to respond. Accordingly, we

conclude that the Respondent violated Rule 8.1(2) of the Rules of Professional Conduct and Practice Book §2-32(a)(1).

This reviewing committee was unable to conclude by clear and convincing evidence that the Respondent violated Rules 1.3, 1.4 or 1.5 of the Rules of Professional Conduct. With respect to the violations of Rules 1.3 and 1.4, this reviewing committee noted that the grievance panel's probable cause findings were predicated upon the Respondent's duty of diligence and communication to the Complainant regarding the return of the retainer. An attorney's obligation under Rules 1.3 and 1.4 runs to the client. In this case, the Complainant was not the client and the Respondent, therefore, owed no duty of diligence or communication to the Complainant. Furthermore, this reviewing committee concludes that the record lacks sufficient evidence to conclude that the Respondent failed to diligently represent his client, Mr. Farmer, in the criminal matter or that he failed to adequately communicate with his client.

This reviewing committee was also unable to conclude by clear and convincing evidence that the Respondent's flat fee of \$25,000 was unreasonable for the services to be rendered, which included the filing of a motion to reopen, an appeal and a habeas corpus action. A fee that is not unreasonable on its face, however, may become unreasonable if the services contracted for are not performed. In this case, the Respondent met with his client, hired an investigator and spoke with potential witnesses regarding the Complainant's case. The Respondent never filed a motion to reopen, an appeal or a habeas corpus petition. Although \$25,000 would have been an unreasonable fee for the services actually performed, the record reflects that the Respondent refunded \$20,000 of the fee to the Complainant. Accordingly, this reviewing committee cannot conclude that the fee charged by the Respondent was unreasonable.

This reviewing committee concludes that the Respondent's violations of Rule 1.15(a), 8.1(2) and 8.4(3) of the Rules of Professional Conduct and Practice Book §2-32(a)(1) constitute serious misconduct. 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.

Additionally, we conclude that the record supports a finding by clear and convincing evidence that the Respondent violated Rules 7.1, 7.5(a) and 8.4(3) of the Rules of Professional Conduct. The record reflects that the Respondent used the firm name of Moniz & Associates when there were never any other attorneys employed by the firm. We find that this misrepresentation constitutes a violation of Rules 7.1 and 7.5(a) of the Rules of Professional Conduct. Lastly, this reviewing committee concludes that the Respondent also violated Rule 8.4(3) of the Rules of Professional Conduct by failing to refund the balance of the retainer fee to the Complainant following his representation to this reviewing committee that he would do so. The Respondent's failure to refund the balance of the

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retainer fee under these circumstances constitutes misrepresentation under Rule 8.4(3) of the Rules of Professional Conduct. Since the presentment will be a trial de novo, we further direct Disciplinary Counsel to include these rule violations in the presentment complaint.

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DECISION DATE: \_\_\_\_\_

7/25/06

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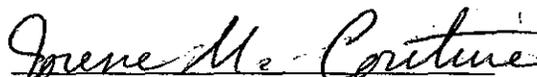
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Attorney Hugh Cuthbertson

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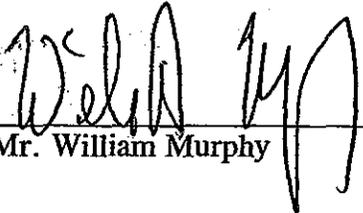
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Attorney Jorene Couture

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Mr. William Murphy