

STATEWIDE GRIEVANCE COMMITTEE

Mark Despires
Complainant

:

vs.

:

Grievance Complaint #08-0745

Michael A. D'Onofrio, Jr.
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 January 6, 2009. The hearing addressed the record of the complaint filed on August 12, 2008, and the probable cause determination filed by the Fairfield Judicial District Grievance Panel on October 6, 2008, finding that there existed probable cause that the Respondent violated Rules 1.3, 1.4(a)(3), 1.4(a)(4) and 3.2 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 December 1, 2008. Pursuant to Practice Book §2-35(d), First Assistant Disciplinary Counsel Patricia King pursued the matter before this reviewing committee. The Complainant appeared at the hearing and testified. The Respondent appeared and testified. No exhibits were received into evidence at the hearing.

This reviewing committee makes the following findings of fact by clear and convincing evidence:

In 2003, the Respondent was appointed to represent the Complainant in a habeas corpus matter after the Complainant had filed a Petition for Writ of Habeas Corpus. In June of 2005, the Respondent withdrew the habeas corpus petition without informing the Complainant. In November of 2005, the Complainant filed a "Motion to Correct Illegal Sentence & Disposition Imposed Illegally" [hereinafter "Motion to Correct"], pro se. The Respondent assisted the Complainant with legal research for the Motion to Correct. In March of 2008, the Complainant was informed by the Acting Chief of Habeas Corpus Services of the Division of Public Defender Services that his habeas corpus petition had been withdrawn in June of 2005. In April of 2008, the Respondent informed the Complainant that he had withdrawn his habeas petition in 2005. The Complainant filed a new Petition for Writ of Habeas Corpus in April of 2008. In and between 2003 and 2008, the Respondent met with the Complainant in prison and sent the Complainant letters.

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The reviewing committee also considered the following:

In or about 2005, the Respondent was suffering from a medical condition.

The reviewing committee concluded that the Respondent violated the following Rules of Professional Conduct by clear and convincing evidence:

The Respondent violated Rules 1.3 and 3.2 of the Rules of Professional Conduct by withdrawing the Complainant's habeas corpus petition in June of 2005. The petition was not refiled until April of 2008. By withdrawing the petition for approximately thirty-four months, the Respondent failed to represent the Complainant with reasonable diligence and failed to expedite the Complainant's legal matter consistent with the interests of the Complainant.

The Respondent's failure to timely inform the Complainant that he had withdrawn his habeas corpus petition constituted a violation of Rule 1.4(a)(3) of the Rules of Professional Conduct. The Respondent failed to keep the Complainant reasonably informed about the status of his matter.

We do not, however, find clear and convincing evidence that the Respondent failed to comply with the Complainant's requests for information. The Respondent met with the Complainant in prison between 2003 and 2008. The Respondent sent the Complainant letters and assisted him with legal research.

Accordingly, we reprimand the Respondent.

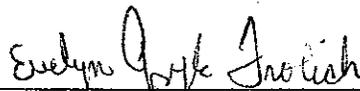
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DECISION DATE: 4/3/09

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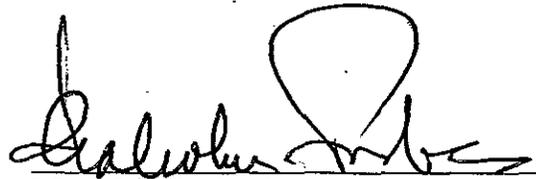
A handwritten signature in cursive script, reading "Evelyn Gryk Frolich".

Attorney Evelyn Gryk Frolich

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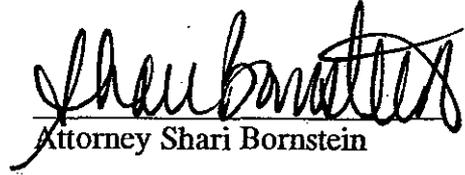
A handwritten signature in black ink, appearing to read "Malcolm Forbes". The signature is written in a cursive style with a large, prominent loop at the end of the last name.

Mr. Malcolm Forbes

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Attorney Shari Bornstein