

STATEWIDE GRIEVANCE COMMITTEE

Salvatore DiMauro
Complainant

:

vs.

:

Grievance Complaint #09-0091

Stephen M. Barber
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 September 2, 2009. The hearing addressed the record of the complaint filed on August 25, 2008, and the probable cause determination filed by the Middlesex Judicial District Grievance Panel on March 4, 2009, finding that there existed probable cause that the Respondent violated Rules 1.4, 1.5(a) and (b), and 1.15(e) of the Rules of Professional Conduct.

Notice of the September 2, 2009 hearing was mailed to the Complainant, to the Respondent and to the Office of the Chief Disciplinary Counsel on August 11, 2009. Pursuant to Practice Book §2-35(d), Assistant Disciplinary Counsel Beth Baldwin pursued the matter before this reviewing committee. The Complainant and the Respondent appeared at the hearing and testified. The Respondent was represented by Attorney Charles DeLuca. Donna DiMauro testified as a witness. Eight exhibits were admitted into evidence. Additionally, three other exhibits were incorporated into the record from the hearing in Fitzgerald v. Barber, #08-0423.

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

In September of 2007, the Complainant retained the Respondent to represent him in a matter involving a DUI charge. The Respondent did not provide the Complainant with a fee agreement.

This reviewing committee also considered the following:

The Complainant paid the Respondent a retainer of \$2,500 for representation in both the administrative and criminal aspects of the DUI charge. The Complainant testified that the Respondent never indicated that the \$2,500 would be a flat fee, and promised to refund a portion of the retainer if they did not have a good case. The Respondent kept postponing the administrative hearing, but otherwise was difficult to reach. The Complainant's wife, Donna DiMauro, also testified as to the difficulty she had when she tried to communicate with the Respondent.

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On the day of the administrative hearing, the Respondent contacted the Complainant and after discussing the incident, decided to raise a defense as to the legality of the roadblock at which the Complainant received his DUI charge. This defense was rejected at the administrative hearing.

The Respondent testified that he did not provide a fee agreement because he had known the Complainant's wife for a number of years. He testified that he told the Complainant that the matter was an "uphill battle" and never indicated that he would refund a portion of the fee, which he indicated was a flat fee for the entire matter, excluding a trial in the criminal matter. The Respondent described his research and efforts in the matter, and stated that he did not receive telephone calls from the Complainant's wife, but did communicate with the Complainant on the Respondent's cell phone.

This reviewing committee concludes by clear and convincing evidence that the Respondent engaged in misconduct. His failure to provide a fee agreement in this matter was in violation of Rule 1.5(b) of the Rules of Professional Conduct. This reviewing committee notes that had a fee agreement been provided, the issues regarding the amount and nature of the fee may well have been avoided. However, this reviewing committee is unable to find that the fee charged was unreasonable, and since it was a flat fee, does not find a violation for failing to provide an accounting. Regarding the issue of communication, the reviewing committee believes that while the Respondent could have done a better job of providing substantive information to the Complainant in this matter, the Respondent's conduct did not rise to the level of an ethical violation.

Since this reviewing committee concludes that the Respondent engaged in unethical conduct, we order the Respondent to take, at his own expense, a continuing legal education ("CLE") course in law office management. The CLE course is to be attended in person, unless the Respondent obtains pre-approval from the Statewide Grievance Committee to take the CLE course electronically or through some other means. The CLE course is to consist of a minimum of three credit hours, and is to be taken within one year of the issuance of this decision. The Respondent is further ordered to provide the Statewide Grievance Committee with written confirmation of his compliance with this condition within thirty days of completion of the CLE course. The written confirmation should be in the form of a certificate of attendance or similar documentation from the course provider.

(8)

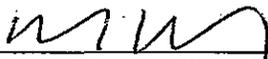
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DECISION DATE: 12/28/09

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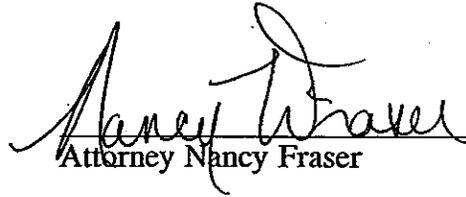
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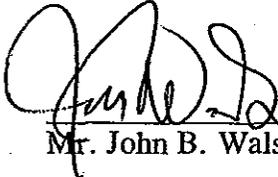


Attorney David Channing

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Attorney Nancy Fraser

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Mr. John B. Walsh