

STATEWIDE GRIEVANCE COMMITTEE

Jan Dormsjo  
Complainant

:

vs.

:

Grievance Complaint #09-0409

Francis Minter  
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 November 4, 2009. The hearing addressed the record of the complaint filed on April 27, 2009, and the probable cause determination filed by the Hartford Judicial District Grievance Panel for Geographical Area 13 and the town of Hartford on September 21, 2009, finding that there existed probable cause that the Respondent violated Rules 1.5, 1.15(b) and 8.1(2) 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 October 5, 2009. Pursuant to Practice Book §2-35(d), Assistant Disciplinary Counsel Suzanne Sutton pursued the matter before this reviewing committee. Student Intern Emily Holness from the Yale Law School Lawyering Ethics Project assisted in the presentation of this matter. The Complainant did not appear at the hearing. The Respondent failed to appear at the scheduled time and the hearing commenced in his absence. The Respondent appeared prior to the conclusion of the hearing and was given an opportunity to testify. Four exhibits were admitted into evidence.

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

On December 28, 2000, the Complainant met with the Respondent to discuss terminating a business contract. The Complainant provided the Respondent with a \$1,000 retainer to be used against future billing, if the Complainant decided to pursue the matter. The Respondent did not provide the Complainant with a written fee agreement. After discussing the matter with the Respondent, the Complainant advised the Respondent that he would contact him and advise him of his decision. The Complainant, thereafter, became involved with pressing family matters and failed to pursue the case. On February 15, 2002 and January 28, 2003, the Respondent sent the Complainant invoices showing that the \$1,000 retainer had not been billed against and that a \$1,000 credit remained.

Grievance Complaint #09-0409

Decision

Page 2

On July 17, 2008, the Complainant wrote to the Respondent and requested the return of his retainer. The Complainant sent a second letter to the Respondent on August 19, 2008 along with a copy of the Respondent's billing statement showing a \$1,000 credit balance. Thereafter, on October 9, 2008, the Respondent sent the Complainant an email advising that over the last eight weeks he had been packing and moving his office. He further advised that he was reviewing the Complainant's payment records and files so that he could respond to the Complainant's request for a refund. In November of 2008, the Complainant sent an email to the Respondent requesting an update from the Respondent. On November 11, 2008, the Respondent responded, stating that he had found some of the information, but needed to review the time records located in a storage facility. The Respondent advised the Complainant that this would take approximately one and one-half weeks. The Complainant sent two emails to the Respondent on December 8 and December 14, 2008 requesting an update on locating the file. The Respondent responded and stated that he had found the time records, but needed more time to review them. On January 12, 2009, the Complainant requested another update on the Respondent's review. Failing to receive a response, the Complainant filed a petition with the Connecticut Bar Association Legal Fee Dispute Program. The Respondent, however, refused to participate in the arbitration. This grievance complaint was thereafter filed on April 27, 2009.

On April 30, 2009, the grievance complaint was sent to the Respondent. The Respondent was advised of his duty pursuant to Practice Book §2-32 to respond to the grievance complaint within thirty days. The Respondent did not submit a response to the grievance complaint.

This reviewing committee also considered the following:

The Respondent testified that he did not provide the Complainant with a refund because the entire retainer had been exhausted. The Respondent further maintained that he was unable to provide the Complainant with an accounting of the retainer because he changed his computer system and lost the Complainant's original time records. The Respondent testified that he believes he put in two to three hours of research on the Complainant's case at \$250 or \$270 an hour. The Respondent further maintained that this research was conducted in 2002, one to two months after his initial meeting with the Complainant and that he orally reported his findings to the Complainant. When questioned about the date of his retention, the Respondent maintained that he could be wrong about the 2002 date. The Respondent testified that he does not have any notes or documents in the file reflecting his research. The Respondent contended that his initial meeting with the Complainant, his research and oral report consumed the \$1,000 retainer. The Respondent testified that he is not sure whether he provided the Complainant with a written fee agreement. The Respondent testified that the file does not contain a fee agreement and he was unable to locate a fee agreement in his computer records.

This reviewing committee also considered the Respondent's disciplinary history. The Respondent's disciplinary history reflects the following: a reprimand issued by the Statewide Grievance Committee on 6/23/06; a reprimand issued by the Statewide Grievance Committee on 9/8/06; a reprimand issued by the Statewide Grievance Committee on 2/15/07 (Respondent's appeal dismissed; appeal pending at Appellate Court); a reprimand issued by the Statewide Grievance Committee on 4/19/07 (Respondent's appeal dismissed; appeal pending at Appellate Court); a reprimand issued by the Statewide Grievance Committee on 4/17/08 (Respondent's appeal dismissed; appeal pending at Appellate Court); an order of presentment issued by the Statewide Grievance Committee on 4/16/09; an order of presentment issued by the Statewide Grievance Committee on 9/17/09; and an order of presentment issued by the Statewide Grievance Committee on 10/30/09.

This reviewing committee concludes by clear and convincing evidence that the Respondent engaged in unethical conduct. The record indicates that the Complainant provided the Respondent with a \$1,000 retainer in December of 2000. Thereafter, the Respondent sent the Complainant a billing statement dated February 15, 2002 and January 28, 2003 reflecting a \$1,000 credit. We do not find credible the testimony of the Respondent that he conducted two to three hours of research on the Complainant's case in 2002. The Respondent was unable to produce any time records, billing statements, notes or documentary evidence from the file to support this claim. Furthermore, the January 28, 2003 billing statement from the Respondent undermines his testimony that he conducted any research in 2002, since the statement showed no time had been billed against the retainer as of January 2003. Accordingly, we conclude that the \$1,000 fee retained by the Respondent was unreasonable in violation of Rule 1.5(a) of the Rules of Professional Conduct since the Respondent did not perform any work to earn the fee.

This reviewing committee further concludes that the Respondent violated Rule 1.15(b) (now 1.15(e)) of the Rules of Professional Conduct by failing to promptly refund the retainer to the Complainant and provide the Complainant with a full accounting of the retainer. The record indicates that the Respondent was provided the retainer in December of 2000 and that the Complainant began requesting the return of the retainer and an accounting in July of 2008. Despite repeated requests from the Complainant, the Respondent has failed to provide the Complainant with a refund or an accounting.

Lastly, this reviewing committee concludes that the Respondent's failure to respond to the grievance complaint constitutes a violation of Rule 8.1(2) of the Rules of Professional Conduct and Practice Book §2-32(a)(1). The Respondent failed to provide any explanation for his failure to respond to the grievance complaint.

In addition to the Rules cited by the grievance panel, this reviewing committee concludes by clear and convincing evidence that the Respondent also violated Rule 1.5(b) of the Rules of Professional Conduct by failing to provide the Complainant with a written fee

Grievance Complaint #09-0409

Decision

Page 4

agreement and Rule 1.16(d) of the Rules of Professional Conduct for failing to provide the Complainant with a refund of the unearned retainer upon the termination of his representation.

This reviewing committee concludes that the Respondent's violations of Rules 1.5, 1.15(b) and 8.1(2) of the Rules of Professional Conduct and Practice Book §2-32(a)(1) warrant a presentment. 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. Since the presentment will be a trial de novo, we further direct Disciplinary Counsel to include the additional violations of Rules 1.5(b) and 1.16(d) of the Rules of Professional Conduct found by this reviewing committee.

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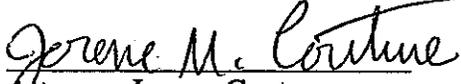
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Grievance Complaint #09-0409  
Decision  
Page 5

  
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Attorney Hugh Cuthbertson

Grievance Complaint #09-0409  
Decision  
Page 6

  
Attorney Jorene Couture

Grievance Complaint #09-0409  
Decision  
Page 7

  
Mr. William Murphy