STATEWIDE GRIEVANCE COMMITTEE

Michael Spyke Complainant	:	
vs.	:	Grievance Complaint #09-0739
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 March 2, 2010. The hearing addressed the record of the complaint filed on August 17, 2009, and the probable cause determination filed by the Fairfield Judicial District Grievance Panel on November 30, 2009, finding that there existed probable cause that the Respondent violated Rules 1.1, 1.3 and 1.4 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 February 4, 2010. Pursuant to Practice Book §2-35(d), Assistant Disciplinary Counsel Karyl Carrasquilla pursued the matter before this reviewing committee. Both the Complainant and the Respondent appeared at the hearing and testified.

The lay member of the reviewing committee, William Carroll, was not available for the hearing. Since both Disciplinary Counsel and the Respondent waived the participation of Mr. Carroll, this decision was rendered by the undersigned.

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

The Respondent was appointed as the Complainant's special Public Defender in February of 2004 regarding a habeas matter. The Complainant received a few letters saying that the Respondent would visit him in jail, but the Respondent did not visit the Complainant until 2005, and only saw him three times overall. The Complainant called the Respondent on numerous occasions, but only spoke with him a few times. In the beginning of 2006, the Respondent filed a habeas petition, but it was filed in the wrong location. A second petition was thereafter submitted but was also defective due to a lack of necessary originals. Ultimately, the habeas petition was refilled, but was denied in 2008. The Complainant last had contact with the Respondent sometime between November of 2007 and January of 2008. The Complainant filed a new habeas petition recently and is awaiting assignment of a new special public defender.

The Respondent testified that due to personal reasons, he was unable to do much work between 2004 and 2005. The Respondent failed to notify the Complainant as to his personal issues in 2005.

This reviewing committee concludes by clear and convincing evidence that the Respondent engaged in unethical conduct in his representation of the Complainant. While this reviewing committee does not believe that the Respondent's conduct was incompetent, it is clear that there was both a lack of diligence and a lack of communication. It took at least four years for the Respondent to bring the Complainant's habeas matter to a decision. During that time frame, the Respondent's contact with the Complainant was minimal, involving just three visits and a few phone calls, and almost no correspondence. The reviewing committee finds that the Respondent violated Rules 1.3 and 1.4(a) of the Rules of Professional Conduct.

Ordinarily, the reviewing committee would order that the Respondent be reprimanded for his conduct in this matter. However, the reviewing committee notes that the Respondent received court-imposed discipline on September 22, 2006 in the matters of Statewide Grievance Committee v. D'Onofrio, CV05-4010137 and Disciplinary Counsel v. D'Onofrio, CV05-04010676. The Court's decision therein resolved a number of grievance complaints, including Ostroski v. D'Onofrio, Grievance Complaint #05-0323 and Crespo v. D'Onofrio, Grievance Complaint #05-0438. The Respondent has been reprimanded twice by the Statewide Grievance Committee: On April 3, 2009 in the matter of Despires v. D'Onofrio, Grievance Complaint #08-0745 and on February 18, 2010 in the matter of Lewis v. D'Onofrio, Grievance Complaint #09-0559. All of the above mentioned grievance complaints were filed within the five years preceding this current grievance complaint. Accordingly, although the Respondent's misconduct does not otherwise warrant a presentment to the Superior Court, pursuant to Practice Book §2-47(d)(1), the disciplinary counsel is directed to file a presentment against the Respondent in Superior Court.

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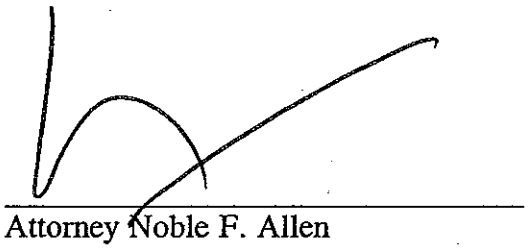
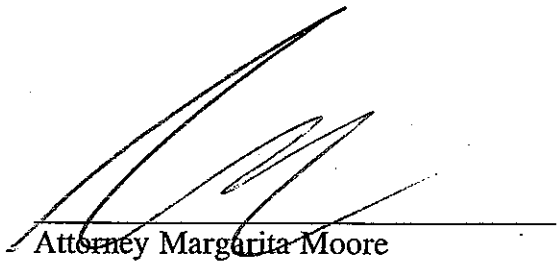
DECISION DATE: 6/25/10



Attorney Noble F. Allen



Attorney Margarita Moore