

STATE OF CONNECTICUT



Michael P. Bowler
Statewide Bar Counsel

Frances Mickelson-Dera
Christopher L. Slack
First Assistant Bar Counsel

Tel: (860) 568-5157
Fax: (860) 568-4953

STATEWIDE GRIEVANCE COMMITTEE

www.jud.ct.gov/sgc/
Second Floor - Suite Two
287 Main Street, East Hartford, Connecticut 06118-1885

09/09/2011

OFFICE OF CHIEF DISCIPLINARY C
100 WASHINGTON STREET
HARTFORD CT 06106

BRIAN E KALIGIAN
BRIAN E. KALIGIAN
ATTORNEY AT LAW
233 BOSTON POST ROAD
ORANGE CT 06477-3244

RE: GRIEVANCE COMPLAINT #10-0925
LARSEN vs. KALIGIAN

Dear Respondent and Disciplinary Counsel:

Enclosed herewith is the decision of the reviewing committee of the Statewide Grievance Committee concerning the above referenced matter. In accordance with the Practice Book Sections 2-35, 2-36 and 2-38(a), the Respondent may, within thirty (30) days of the date of this notice, submit to the Statewide Grievance Committee a request for review of the decision.

A request for review must be sent to the Statewide Grievance Committee at the address listed above.

Sincerely,

Michael P. Bowler

Encl.

cc: Attorney J A. Rebollo
TOOHER WOCL & LEYDON LLC
Mark Larsen

STATEWIDE GRIEVANCE COMMITTEE

Mark Larsen
Complainant

vs.

Brian Kaligian
Respondent

Grievance Complaint #10-0925

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, 1061 Main Street, Bridgeport, Connecticut on July 13, 2011. The hearing addressed the record of the complaint filed on November 8, 2010 and the probable cause determination filed by the Ansonia/Milford Judicial District Grievance Panel on March 7, 2011, finding that there existed probable cause that the Respondent violated Rules 1.1, 1.3, 1.4(a)(2), (3) and (4), 1.5(a)(1) and (4), 1.16 (d) and 8.4(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 June 1, 2011. 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 before this reviewing committee. B. J. Smith-Davis also testified before this reviewing committee. The Respondent was represented by Attorney Nicholas Wocl.

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

In May of 2008, the Complainant consulted with the Respondent regarding a bankruptcy. At the initial consultation, the Respondent provided the Complainant with a checklist of documents required to analyze financial problems and/or prepare a bankruptcy petition. The Respondent did not charge the Complainant for the initial consultation. In June of 2008, the Complainant signed a retainer agreement and paid the Respondent a \$2,300 flat fee to file a Chapter 7 Bankruptcy petition. The \$2,300 fee included a \$300 filing fee. The Respondent's retainer agreement provided that "[a]ll fees are deemed earned upon receipt." The Respondent had a second meeting with the Complainant for one hour, in June of 2008, to discuss bankruptcy filing procedure. At the second meeting, the Complainant provided the Respondent with the financial documentation needed to file a Chapter 7 bankruptcy petition. The Complainant informed the Respondent that he was leaving the country to pursue a job opportunity in Africa. The Complainant provided the Respondent with contact

information, including email and cell phone information and the name of an individual in the United States with a power of attorney. The Complainant left for Africa on June 23, 2008. Thereafter, the Complainant made several trips back and forth to Africa.

After the Complainant departed for Africa, the Complainant's creditors contacted his family and friends. In November of 2008, the Complainant emailed the Respondent advising that creditors were contacting his family and friend. The Complainant also requested an update regarding his bankruptcy matter. On November 11, 2008, the Respondent emailed the Complainant "I will get the thing ready to file. It seems that the pressure is building and no one needs that. You will hear from us shortly." Notwithstanding, between November 12, 2008 and May 4, 2009, the Respondent did not communicate with the Complainant regarding his bankruptcy matter. The Respondent did not prepare and file a bankruptcy petition. The Complainant's creditors continued to contact the Complainant's family. On or about May 13, 2009, the Complainant asked the Respondent not to file the bankruptcy and requested a refund. The Respondent did not confirm the termination of the representation in writing to the Complainant. In September of 2009, the Respondent provided the Complainant with an accounting that did not include dates for services rendered. The Respondent offered to refund \$300 to the Complainant. The Complainant disagreed with the Respondent's accounting and declined the \$300 refund.

This reviewing committee also considered the following:

The Complainant contended that he paid the Respondent to commence a Chapter 7 bankruptcy and to deal with creditors. The Respondent contended that he had an agreement with the Complainant to "hold off" the Complainant's creditors while he was in Africa, and to file the bankruptcy petition when the Complainant returned from Africa. The Respondent testified that he provided the Complainant with a reconstructed time sheet because he does not maintain time records in flat fee bankruptcy matters. The Respondent testified that his hourly rate in 2008 and 2009 was \$325. The Respondent testified that he deleted the language from his fee agreement that fees are earned upon receipt.

This reviewing committee finds the following violations of the Rules of Professional Conduct by clear and convincing evidence:

The Respondent engaged in unethical conduct in connection with his representation of the Complainant in a bankruptcy matter. The Respondent failed to act with reasonable diligence in representing the Complainant in violation of Rule 1.3 of the Rules of Professional Conduct, by failing to file a Chapter 7 bankruptcy petition. The Respondent failed to adequately communicate with the Complainant in connection with the representation in violation of Rules 1.4(a) (2) and (3) of the Rules of Professional Conduct, by failing to reasonably consult with the Complainant regarding the means to be used to accomplish the Complainant's objectives and by failing to keep the Complainant reasonably informed regarding the status of his bankruptcy matter. The Respondent

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failed to confirm the termination of his representation, in writing, to the Complainant in violation of Rule 1.16(d) of the Rules of Professional Conduct. The Respondent's \$2,300 flat fee was unreasonable in violation of Rule 1.5(a)(1) and (4) of the Rules of Professional Conduct. This reviewing committee finds the Complainant credible that the Respondent was paid to commence a Chapter 7 bankruptcy, and to deal with the Complainant's creditors. The Respondent did not earn the \$2,300 flat fee. The objective of the representation was not achieved. The Respondent did not file a Chapter 7 bankruptcy petition. The Complainant's creditors contacted his family and friends. Notwithstanding, we find the Respondent earned \$325 of the \$2,300 flat fee in connection with his one hour second meeting with the Complainant in June of 2008.

This reviewing committee finds that the record lacks clear and convincing evidence to substantiate a finding that the Respondent violated Rules 1.1, 1.4(a)(4) and 8.4(4) of the Rules of Professional Conduct.

Since we conclude that the Respondent violated the Rules of Professional Conduct, pursuant to Practice Book §2-37(a)(2), we order the Respondent to make restitution to the Complainant in the total amount of \$1975, representing \$1675 in legal fees and the \$300 filing fee, within 4 months of the date of this decision.

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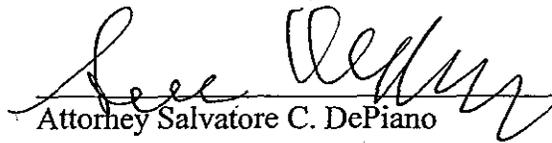
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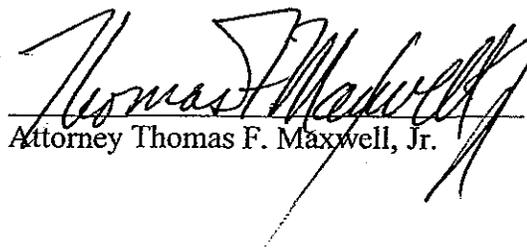


Attorney Salvatore C. DePiano

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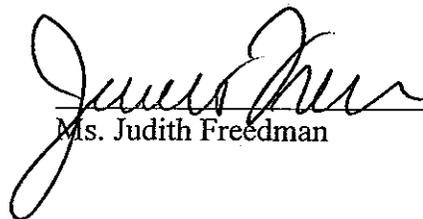
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Attorney Thomas F. Maxwell, Jr.

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Ms. Judith Freedman