

STATEWIDE GRIEVANCE COMMITTEE

Guiomar Rebelo
Complainant

vs.

Grievance Complaint #08-0302

Robert D. Swartout
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 5, 2008. The hearing addressed the record of the complaint filed on April 3, 2008, and the probable cause determination filed by the Hartford Judicial District Grievance Panel for Geographical Area 13 and the town of Hartford on June 16, 2008, finding that there existed probable cause that the Respondent violated Rules 8.1, 1.5 and 1.15 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 September 22, 2008. Pursuant to Practice Book §2-35(d), Assistant Disciplinary Counsel Suzanne Sutton pursued the matter before this reviewing committee. The Complainant appeared and testified at the hearing. The Respondent did not appear at the hearing.

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

The Complainant was one of a number of people who retained the Respondent in December of 2006 regarding immigration matters. The Complainant, on behalf of her husband, gave the Respondent \$1,000 as a retainer. No written retainer agreement was provided by the Respondent. Thereafter, the Respondent failed to return a number of the Complainant's telephone calls. When the Respondent met with the Complainant and her husband in the summer of 2007, he had not filed any paperwork in their matter, but gave them some forms to fill out. The Complainant filled out the forms but the Respondent never filed them. The Respondent never pursued the immigration matter and failed to return the Complainant's phone calls.

Subsequently, the Complainant was able to contact the Respondent and told him that she was now separated from her husband. The Respondent agreed to use the retainer from the immigration matter to pursue a marital dissolution. Again, months passed without any action taken by, or communication from, the Respondent. When the Complainant appeared at the

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Respondent's office unannounced, he again promised to pursue the dissolution matter, but he did not follow through. The Complainant ultimately handled the dissolution pro se. The Complainant demanded the retainer back, but never received it.

The Respondent did not answer the grievance complaint.

This reviewing committee concludes by clear and convincing evidence that the Respondent engaged in unethical conduct. The Respondent's failure to answer the grievance complaint was in violation of Rule 8.1(2) of the Rules of Professional Conduct and Practice Book §2-32(a)(1). Given that the Respondent never pursued either the immigration matter or the dissolution matter, his fee was unreasonable, in violation of Rule 1.5(a) of the Rules of Professional Conduct. The Respondent's failure to refund the retainer was in violation of Rule 1.15 of the Rules of Professional Conduct.

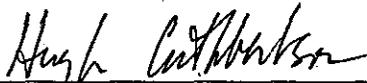
We direct the Disciplinary Counsel to file a presentment against the Respondent in Superior Court for the imposition of whatever sanctions are deemed appropriate. Since a presentment is a trial de novo, we further direct the Disciplinary Counsel to add charges that the Respondent's representation demonstrated both a lack of diligence and a lack of communication, in violation of Rules 1.3 and 1.4, respectively, of the Rules of Professional Conduct, and that his failure to have a written fee agreement was in violation of Rule 1.5(b) of the Rules of Professional Conduct. The reviewing committee leaves to the discretion of Disciplinary Counsel whether to seek restitution in the presentment proceeding.

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DECISION DATE: 1/16/09

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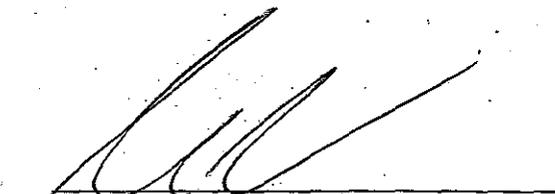


Attorney Hugh Cuthbertson

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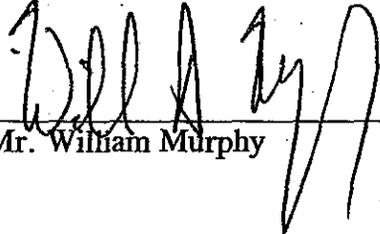
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Attorney Margarita Moore

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Mr. William Murphy