

STATEWIDE GRIEVANCE COMMITTEE

William Scott
Complainant

vs.

Grievance Complaint #08-0637

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, 80 Washington Street, Hartford, Connecticut on February 5, 2009. The hearing addressed the record of the complaint filed on July 14, 2008, and the probable cause determination rendered by the Hartford Judicial District Grievance Panel for Geographical Area 13 and the town of Hartford ("Grievance Panel") on November 12, 2008, finding that there existed probable cause that the Respondent violated Rules 1.5 and 8.1(2) of the Rules of Professional Conduct and Practice Book §2-32(a)(1).

Notice of the February 5, 2009 hearing was mailed to the Complainant, to the Respondent and to the Office of the Chief Disciplinary Counsel on January 6, 2009. Pursuant to Practice Book §2-35(d), Assistant Disciplinary Counsel Beth L. Baldwin pursued the matter before this reviewing committee. The Respondent did not appear. The Complainant appeared and testified. No exhibits were admitted into evidence.

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

The Complainant was initially represented by a public defender in a serious criminal matter. He hired the Respondent as a private attorney. The Complainant or his family paid the Respondent \$1,500 to represent him up to trial and then paid the Respondent another \$1,500 either as an additional retainer or for costs associated with discovery. The Complainant believed the second payment of \$1,500 was either to hire a psychiatrist for an evaluation or to hire an investigator. The Respondent did not prepare a written fee agreement for the Complainant.

The Respondent did not file any discovery motions in this matter. The Respondent did not hire an investigator or psychiatrist. The Respondent did visit the Complainant in prison twice and did visit the alleged victim of the crime to get a sworn statement. The Respondent also made several court appearances on behalf of the Complainant, although at each appearance he merely requested a continuance. The Respondent also brought the Complainant an offer from the State for a plea agreement. The Complainant rejected this offer.

In July of 2008, the Complainant filed this grievance complaint. The Respondent did not file an answer.

This reviewing committee also considered the following:

The Complainant testified that the \$1,500 was a flat fee for representing him until trial. He also testified that the Respondent offered to reimburse the entire \$3,000 to the Complainant's mother, but never did so.

The Respondent is currently the subject of four presentments. The Respondent has two prior reprimands.

This reviewing committee concludes by clear and convincing evidence that the Respondent violated the Rules of Professional Conduct.

The Grievance Panel found probable cause that the Respondent had violated Rule 1.5 because "it does not appear that much if any work was performed by the Respondent". We cannot find by clear and convincing evidence that the fee taken by the Respondent was unreasonable. He visited the Complainant twice in prison, interviewed the alleged victim, appeared several times in court and negotiated an offer for a plea agreement. However, there was confusion as to whether the second fee of \$1,500 was for the Respondent's fee or for costs and expenses associated with preparing a defense; the Respondent did not provide the Complainant with a written fee agreement. Therefore we do determine by clear and convincing evidence that the Respondent violated Rule 1.5(b) for failure to have a written fee agreement.

We also find by clear and convincing evidence that the Respondent violated Rule 8.1(2) and Practice Book §2-32(a)(1) by failing to provide an answer to this complaint.

Since we conclude that the Respondent violated Rule 8.1(2) of the Rules of Professional Conduct and Practice Book §2-32(a)(1), we direct the Disciplinary Counsel to file a presentment against the Respondent in the Superior Court for the imposition of whatever discipline is deemed appropriate. Since a presentment is a de novo proceeding, we further direct the Disciplinary Counsel to include a charge in the presentment that the Respondent violated Rule 1.5(b).

(D)
EMR

DECISION DATE: 3/6/09

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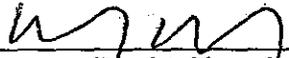
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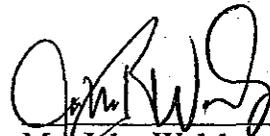


Attorney David Channing

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Mr. John Walsh