STATEWIDE GRIEVANCE COMMITTEE

Daniel W. O'Brien Complainant	:	
vs.	:	Grievance Complaint #08-0661
David S. Shields, II 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 21, 2008, and the probable cause determination rendered by the Middlesex Judicial District Grievance Panel ("Grievance Panel") on September 15, 2008, finding that there existed probable cause that the Respondent violated Rules 1.3, 1.5(a) and 1.15(b) of the Rules of Professional Conduct and Practice Book §2-32(a)(1).

Pursuant to Practice Book §2-35(c), a reviewing committee of the Statewide Grievance Committee reviewed the record of this complaint and determined that there existed probable cause that the Respondent violated Rule 1.4(a)(3) and (4) of the Rules of Professional Conduct on December 3, 2008. This complaint was then reassigned to this reviewing committee.

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 Karyl L. Carrasquilla 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 Respondent had done work for the Complainant in the past. In November of 2007, the Complainant hired the Respondent to pursue three separate civil lawsuits. The Complainant paid the Respondent a retainer of $7,500. The Respondent did not place these funds in an IOLTA account. The Respondent told the Complainant the lawsuits would be filed by the end of the year. The Respondent did not file the lawsuits. The Complainant made numerous attempts to contact the Respondent, including letters and phone messages. The Respondent stated he would file the lawsuits. The Respondent did not file the lawsuits. The Complainant continued to try and reach the Respondent throughout 2008. The Respondent promised he would return the retainer. The Respondent did not return the retainer.

In July of 2008, the Complainant filed this grievance complaint. The Respondent did not file an answer. The Respondent filed a motion for continuance on December 3, 2008 stating, "Since this matter arose Respondent has been trying to obtain funds with which to repay Complainant." He further noted that once he received funds from a separate client, then the Respondent would have the "the means to repay Complainant." The Respondent has not returned the Complainant's retainer.

The Complainant received his files back from the Respondent but there was evidence missing from the files, the files were disorganized and did not reflect any work performed.

This reviewing committee also considered the following:

The Complainant testified that the Respondent's cell phone no longer works. Disciplinary Counsel represented that she has had difficulty contacting the Respondent. The Complainant testified that his claims are impaired because of the way in which the files were returned.

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

The evidence shows that the Respondent received the files in November of 2007 and promised to file a lawsuit in December of 2007. The Respondent never filed the lawsuit. The evidence also shows that the Respondent made promises to the Complainant which he did not keep and failed to return phone calls and correspondence. We find by clear and convincing evidence that this conduct violated Rules 1.3 and 1.4(a)(3) and (4) of the Rules of Professional Conduct.

The evidence shows that the Complainant paid the Respondent $7,500 to pursue three lawsuits. The Respondent did not place these funds in an IOLTA account. The Respondent did not perform any work to earn a fee. The Respondent, by his own admission, does not have this money available. The $7,500 fee was unreasonable in light of the fact that no work was done on the file. The Respondent did not safeguard the Complainant's funds by placing them in an IOLTA account and the Respondent no longer has these funds. We find by clear and convincing evidence that the Respondent violated Rules 1.5(a) and 1.15(b). We find that the Respondent knowingly misappropriated the Complainant's funds, which should have been held in trust.

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

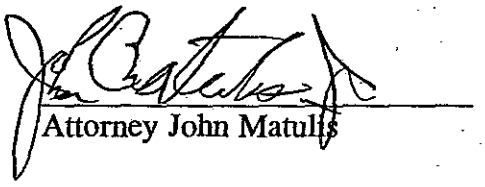
Finally, we conclude that the Respondent's actions also violate Rule 8.4(4) because he failed to return the retainer and the complete file to the Complainant. This conduct was

prejudicial to the administration of justice in that it impaired the Complainant's ability to pursue his lawsuits.

Since we conclude that the Respondent violated Rules 1.3, 1.4(a)(3) and (4), 1.5(a) and 1.15(b) 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. We further request Disciplinary Counsel to pursue a restitution order against the Respondent. 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 8.4(4).

(D)
EMR

DECISION DATE: 3/6/09



Attorney John Matulis

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Mr. John Walsh