

STATEWIDE GRIEVANCE COMMITTEE

Shu Zhu Huang  
Complainant

:

vs.

:

Grievance Complaint #08-0676

Dmitry Paniotto  
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 July 25, 2008, and the probable cause determination filed by the Windham Judicial District Grievance Panel on September 30, 2008, finding that there existed probable cause that the Respondent violated Rule 1.5(b) of the Rules of Professional Conduct. The hearing also addressed the additional finding of probable cause issued by the reviewing committee of Attorney Hugh Cuthbertson, Attorney Jorene Couture and Mr. William Murphy on September 3, 2009, finding that the Respondent violated Rules 1.2, 1.3 and 1.4(b) 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 24, 2010. Pursuant to Practice Book §2-35(d), Assistant Disciplinary Counsel Karyl Carrasquilla pursued the matter before this reviewing committee. Neither the Complainant nor the Respondent, who both reside in California, appeared at the hearing. The disciplinary counsel rested on the record.

The lay member of the reviewing committee, William Carroll, was not available for the hearing. Since the disciplinary counsel 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 Complainant, a citizen of the People's Republic of China, entered the United States in 1993. The Complainant went through a series of immigration proceedings beginning in 1994 when he applied for asylum. The Complainant's efforts to obtain relief through the immigration courts were unsuccessful, allegedly due to errors by his prior counsel. In April of 2008, the Complainant retained the Respondent to represent him, ultimately paying the Respondent \$3,000 as a retainer. The Respondent did not provide the Complainant with a retainer agreement.

This reviewing committee also considered the following:

The Complainant alleged that he expected the Respondent to file a motion to reopen based on the Lozada case and raising claims of the ineffective assistance of the Complainant's prior counsel. The Respondent declined to file a Lozada motion, as he took the position that the former counsel's actions were tactical decisions based on what former counsel deemed to be the best course of action for the Complainant and not an error serious enough to form a legitimate basis for a Lozada motion. The Respondent filed a motion to reopen based on other grounds on April 29, 2008. This motion was denied on June 30, 2008. The Complainant thereafter retained other counsel.

Regarding the failure to provide a fee agreement, the Respondent stated that due to the Complainant's incarceration at the time, the Complainant would not be able to sign a retainer agreement and that seeking to do so would have delayed the preparation of the motion to reopen. The Respondent provided written receipts of the retainer payments in lieu of the fee agreement.

This reviewing committee concludes by clear and convincing evidence that the Respondent violated Rule 1.5(b) of the Rules of Professional Conduct. The Respondent's failure to provide a fee agreement is a clear violation of Rule 1.5(b)'s requirement that an attorney provide a written communication to a client setting forth the scope of the representation, and the basis or rate of the fee.

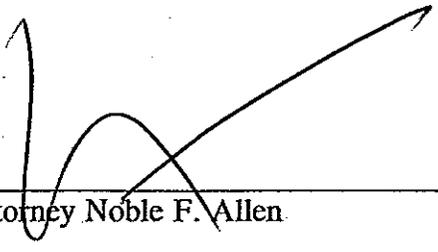
The Respondent's arguments as to the fee agreement are unpersuasive both factually and legally. Rule 1.5(b) does not require a client to sign a fee agreement and allows for a reasonable time in which to provide it. Here, the Respondent did not provide one even though the representation stretched out over several months. Additionally, payment receipts are insufficient to comply with the rule. As to the other findings of probable cause, this reviewing committee is unable to find violations by clear and convincing evidence. This reviewing committee is unable to conclude that the Respondent's analysis of the situation, and his rationale for not filing a Lozada motion, was unreasonable.

Having found that the Respondent violated Rule 1.5(b), this reviewing committee hereby reprimands the Respondent.

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DECISION DATE: 5/28/10

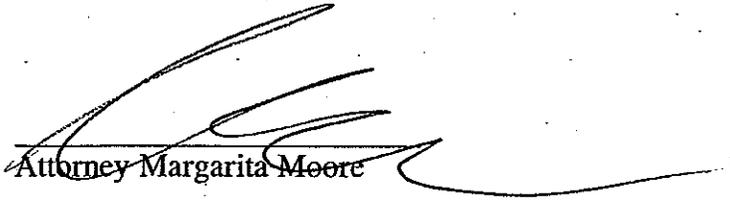
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Attorney Noble F. Allen

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Attorney Margarita Moore