STATEWIDE GRIEVANCE COMMITTEE

Augustus Samuels Complainant	:	
vs.	:	Grievance Complaint #09-0278
Robert 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 September 2, 2009. The hearing addressed the record of the complaint filed on March 17, 2009, and the probable cause determination rendered by the Hartford Judicial District Grievance Panel for Geographical Area 13 and the town of Hartford on July 10, 2009, finding that there existed probable cause that the Respondent violated Rules 1.1, 1.5, 8.4(3) and 8.1 of the Rules of Professional Conduct and Practice Book §2-32(a)(1).

Notice of the September 2, 2009 hearing was mailed to the Complainant, to the Respondent and to the Office of the Chief Disciplinary Counsel on August 11, 2009. Pursuant to Practice Book §2-35(d), Assistant Disciplinary Counsel Suzanne Sutton pursued the matter before this reviewing committee. The Complainant appeared and testified. The Respondent did not appear. One exhibit was admitted into evidence.

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

Several years ago, the Complainant pled guilty to a felony involving a motor vehicle, but believed that the guilty plea would not affect his record because he only paid a fine ("motor vehicle felony"). In 2008, the Complainant was arrested on various charges including possession of a gun by a felon ("the gun charge"). The Complainant was represented by counsel in the case, but was unhappy with his representation. In March of 2008, the Complainant hired the Respondent to represent him regarding the gun charge. The Respondent showed up late to court and Complainant's counsel continued to represent the Complainant instead. The Complainant and Respondent agreed that the Respondent would represent him in having the prior felony reopened and removed from his record.

On April 25, 2008, the Complainant's wife paid the Respondent $1,500 to reopen the motor vehicle felony and remove it from the Complainant's record. The Respondent promised her that he could accomplish this. The Respondent cashed the check but failed to do any work on the Complainant's file. The Complainant and his wife tried to contact the

Respondent repeatedly and he never communicated with them after receiving the fee, nor did he provide them with a retainer agreement.

A copy of this grievance complaint was sent to the Respondent at his registered office address but was returned to the Office of Statewide Bar Counsel stamped "unable to forward/unclaimed". A copy of the grievance complaint was then sent to Respondent's registered home address. The Respondent did not file an answer to the grievance complaint.

This reviewing committee also considered the following:

On May 15, 2009, the Respondent was suspended from the practice of law for three years with conditions placed on his reinstatement to the bar. Disciplinary Counsel advised the reviewing committee that her office does not believe the Respondent is working or residing at either his registered office or home address and that she believes the Respondent may be in Florida.

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

We find there is clear and convincing evidence that the Respondent violated Rule 1.1 of the Rules of Professional Conduct. The Respondent accepted a fee to reopen the Complainant's motor vehicle felony, but he failed to reopen the case or perform any work to earn that fee. The Respondent also promised the Complainant that he could remove the felony from his record when such a promise was unreasonable. We believe that the Respondent failed to act with competence in handling the Complainant's motor vehicle felony.

We find there is clear and convincing evidence that the Respondent violated Rule 1.5 of the Rules of Professional Conduct. Having found that the Respondent did no work to earn the Complainant's fee, it was unreasonable for him to keep a fee in this matter. There is clear and convincing evidence that the Complainant's wife paid the Respondent a fee and that the Respondent failed to perform any work to earn that fee.

We find there is clear and convincing evidence that the Respondent violated Rule 8.4(3) of the Rules of Professional Conduct. There is clear and convincing evidence that the Respondent took a fee from the Complainant with no intention of performing any work on his behalf. We infer from Respondent's failure to communicate with the Complainant or his wife after he cashed the check that he never intended to do any work on this matter.

We find there is clear and convincing evidence that the Respondent violated Rule 8.1 of the Rules of Professional Conduct and Practice Book Section 2-32(a)(1). The grievance complaint was sent to the Respondent at his registered office and home

addresses. It was the Respondent's duty to notify the Statewide Grievance Committee if he changed office or home addresses. The Respondent failed to respond to the grievance complaint. Accordingly, this reviewing committee concludes there is clear and convincing evidence that the Respondent violated Rule 8.1 and Practice Book §2-32(a)(1) by failing to respond to reasonable requests for information from disciplinary authorities without good cause.

Since we conclude that the Respondent violated Rules 1.1, 1.5, 8.4(3) and 8.1 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. In addition, we request Disciplinary Counsel pursue full restitution of $1,500 for the Complainant.

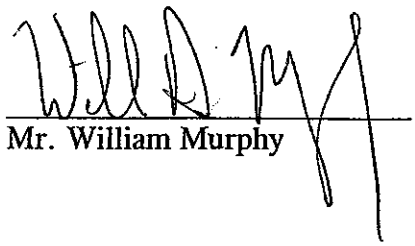
(D)
EMR

DECISION DATE: 9/18/09

Hugh Cuthbertson

Attorney Hugh Cuthbertson

Attorney Jorene Couture



Mr. William Murphy