

ACTS OF UNETHICAL MISCONDUCT RELATED TO CRIMINAL REPRESENTATION

This part of the Grievance is a more detailed account of Fleisher's acts of professional, unethical, misconduct primarily related to the Federal Criminal Procedure.

Fleisher's Violations in Regard to Plea Bargain

The government and the Federal Court would not wait for the Probate determination which needed the delayed IRS Federal Estate Tax determination. Fleisher did not ask the Federal Judge to delay the case that was assigned to him to await Probate Court's determined distribution.

Schwartz was not charged with theft, embezzlement or tax evasion. Schwartz, on the ill advice of Fleisher, engaged in a Plea Bargain, pleading guilty to the First Count of Mail Fraud, stemming from the government's belief that three letters (two of which were composed by Fleisher) that together constituted a scheme of dishonesty against Hadassah, a Jewish charity. Schwartz's early Notice to Hadassah stated that it was a beneficiary. Schwartz could not state the amount of the bequest. Fleisher, much later, while hired as Schwartz's attorney, sent two other letters to Hadassah that evaded their questions of entitlement, prompting the government's claims of Mail Fraud.

In the First Count, Mail Fraud, the government claimed, without substantiation, that Hadassah suffered a presumed and unsubstantiated loss of \$2,492,469. This claimed amount was based on a percentage of "gross" estate and not the required "adjusted net estate after taxes and expenses. Only Probate Court had the authority to compute and determine any amount of the bequest. Even up to the time of sentencing, no amount of bequest was yet determined or approved by Probate Court.

Before the Plea Bargain was entered, Fleisher failed to involve Schwartz in any discussion with the government in an effort to fairly express the facts. Violating his ethical responsibility of communication with his client, Fleisher met with the United States Attorney and, without Schwartz's knowledge, met and agreed to a Plea Agreement that contained statements, figures, and assertions that were fatally false, incorrect, and disadvantageous to Schwartz. Fleisher assured Schwartz that these false statements would permit a Plea Bargain and nominal sentence. Fleisher advised Schwartz to accept responsibility for acts that Schwartz did not do, only for the use of the Plea Bargain, to be later corrected before sentence.

Fleisher told Schwartz that after the Plea Hearing, all statements would be amended to reflect the truth and permit a very nominal sentence. Fleisher had added the phrase "readily provable loss" into the Plea Agreement, which wording, he assured Schwartz, would permit him to later demand a hearing on the amounts. Schwartz agreed to these statements because Fleisher said they had to be admitted to accomplish a Plea Bargain.

Fleisher never followed through with a hearing.

Fleisher failed to coordinate all federal matters with pending Hamilton County Probate Court proceedings, including the need to await the delayed Probate administration and the final distribution of the computed charitable bequest from the Estate.

Fleisher either had no actual intention of conducting a Post-Plea Hearing to correct the "Plea Bargain Only Facts", or he procrastinated and neglected to request the promised hearing. It was Fleisher's professional responsibility to communicate his intentions to Schwartz and prepare for, request, and engage in the intended hearing.

The facts relating to the two Counts must be reviewed in detail to support the Grievance that Fleisher committed unethical Rule violations in regard to those Plea Counts. On advice of Fleisher, Schwartz plead guilty to two Counts, (1) Mail Fraud and (2) Filing a False Tax Return. The more specific background defining the unethical acts of Fleisher follow: