



OFFICE OF BAR COUNSEL

September 8, 2009

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**Re: *In re Tilman L. Gerald, Esquire*
(D.C. Bar Registration No. 928796)
Bar Docket No. 148-03**

Dear Mr. Gerald:

This office has completed its investigation of the above-referenced matter. We find that your conduct reflected a disregard of certain ethical standards under the District of Columbia Rules of Professional Conduct (the "Rules"). We are, therefore, issuing you this Informal Admonition pursuant to D.C. Bar Rule XI, sections 3, 6, and 8.

We docketed this matter for investigation on May 12, 2003, based on a complaint filed by a former client (the "Complainant"). The facts underlying the complaint are as follows:

In 1999, you represented the Complainant in a collection action. On October 28, 1999, you obtained a \$33,360 judgment for him, plus interest at 6% per annum to be calculated as of September 10, 1999. Thereafter, in June 2000, you helped the Complainant obtain a monthly garnishment of the defendant's wages in order to satisfy the judgment.

While you are unable to provide this office with a writing setting out the basis of your final fee, you did provide a copy of the letter you initially sent the Complainant in June 1991 enclosing a retainer agreement for your services in collecting an unpaid debt for which you agreed to charge him \$175 per hour. Several years later, after he had ceased paying you on an hourly basis, you and the Complainant agreed that he would pay you one-third of any amount you collected. In November 2000, you confirmed in writing the revised agreement, stating that your "fee in this matter is one-third of the total judgment as we discussed" You do not indicate whether your one-third fee would include any part of the accrued interest in the judgment. Further, it appears that you both agreed that you could take half of every payment received until your fee was paid.

During our investigation, you provided an accounting prepared by a CPA of the funds that you received. Bar Counsel also obtained copies of bank records of the trust account into which you deposited the payments from the defendant's employer from June 2000 until February 2003. The bank records reflect that you deposited the payments in your trust account. You then sent the Complainant a check for half the amount and, thereafter, with a few exceptions, wrote yourself a check for your fee from the other half of the payment. The bank records reflect, based on our review, that you did not withdraw, as your fee, half of every payment you received from the defendant's employer and that the funds your client claimed were his, remained in your trust account.

In March of 2003, Complainant demanded that he be sent the garnishment checks directly and terminated your services.¹ You promptly informed the defendant's employer of your termination and made arrangements in accordance with the Complainant's instructions to have all future payments sent to him directly.

Shortly thereafter, the Complainant filed a complaint with this office stating that you had retained more funds than you were entitled to receive as attorney's fees. He also filed an application for arbitration with the D.C. Bar's Attorney Client Arbitration Board ("ACAB"), claiming that you owed him approximately \$7,000. On November 10, 2004, prior to a hearing before the ACAB, you and the Complainant settled his claims.

You have admitted to this office that you retained in your trust account funds in excess of the fee you were entitled to receive under the subsequent fee agreement.

Based on our investigation, Bar Counsel finds that your conduct, as described above, violated Rule 1.15(b) and Rule 1.16(a) of the Rules of Professional Conduct.

Rule 1.15(b) provides that a lawyer shall "promptly deliver to the client . . . any funds . . . that the client is entitled to receive." You admit that you failed to send your client all the funds to which he was entitled by February 2003 when you were discharged. You finally paid him the additional funds after he filed a petition with the ACAB. You have offered no explanation as to why you failed to promptly pay your client all the funds he was entitled to receive, as required by Rule 1.15(b).

Rule 1.16(d) states that, "in connection with a termination of services, a lawyer shall take timely steps to the extent reasonable practicable to protect a client's

¹ Complainant took issue with the time it was taking you to deliver his monthly settlement payments to him. Based on the bank records, it appears that, to the extent there were delays in the transfer of funds to Complainant, they were not caused by dilatory or unreasonable actions on your part.

interests, such as . . . surrendering property to which the client's entitled." The Complainant terminated your services in February 2003. As stated, you continued to retain additional funds belonging to Complainant following your termination until November 2004. Following your termination, you were obligated to review your financial records to determine what, if any, funds belonging to your client remained in your trust account. Your records reveal that you held at least \$3,000.00 belonging to Complainant for many months after he discharged you. Pursuant to Rule 1.16(d), you should have disbursed these funds in a timely fashion after you were terminated. You failed to do so. Indeed, you only released the funds after your client sought fee arbitration in July 2004.

In issuing this informal admonition, we have taken into consideration that you fully cooperated with Bar Counsel's investigation, that you accept responsibility for your action, and that you eventually disbursed to your client the funds held in your trust account.

This letter constitutes an Informal Admonition pursuant to D.C. Bar Rule XI, §§ 3, 6, and 8, and is public when issued. Please refer to the attachment to this letter of Informal Admonition for a statement of its effect and your right to have it vacated and have a formal hearing before a hearing committee.

If you would like to have a formal hearing, you must submit a written request for a hearing to the Office of Bar Counsel, with a copy to the Board on Professional Responsibility, within 14 days of the date of this letter, unless Bar Counsel grants an extension of time. If a hearing is requested, this Informal Admonition will be vacated, and Bar Counsel will institute formal charges pursuant to D.C. Bar R. XI, § 8 (b). The case will then be assigned to a Hearing Committee, and a hearing will be scheduled by the Executive Attorney for the Board on Professional Responsibility pursuant to D.C. Bar R. XI, § 8(c). Such a hearing could result in a recommendation to dismiss the charges against you or a recommendation for a finding of culpability, in which case the sanction recommended by the Hearing Committee is not limited to an Informal Admonition.

Sincerely,

Wallace E. Shipp, Jr.
Bar Counsel

Enclosure

WES:RTD:act