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October 20, 2011

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**BY FIRST-CLASS AND CERTIFIED
MAIL NO. 71969008911108746779**

Martin F. McMahon, Esquire
c/o Arthur D. Burger, Esquire
Jackson & Campbell
1120 20th Street, N.W.
South Tower
Washington, D.C. 20036

Re: *In re Martin F. McMahon, Esquire*
(D.C. Bar Registration No. 196642)
Bar Docket No. 2006-D153

Dear Mr. McMahon:

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

In May 2001, Ms. ["ZA"] retained you to prosecute a civil lawsuit against Howard University. On January 30, 2002, you filed a complaint against Howard University in the District of Columbia Superior Court on behalf of Ms. ZA, styled *ZA v. Howard University*.

The complaint alleged liability due to negligent hiring, breach of contract, and negligent misrepresentation. Ms. ZA attended the Howard University College of Dentistry during the 1998-1999 school year. Howard University approved certain testing accommodations for Ms. ZA, in light of her learning disability. In late September 1998, Ms. ZA's living quarters on Howard University's campus was severely damaged due to a water leak. Thereafter, Ms. ZA allegedly became seriously ill as a result of unsanitary living conditions. Due to her illness she was unable to attend classes and missed several quizzes. In addition, Ms. ZA did not take final examinations in two of her classes, Anatomy and Occlusion. In connection with her Anatomy class, Ms. ZA alleged that she was denied the testing accommodations which Howard University had previously approved. The civil complaint also alleged that beginning in February 1999, Ms.

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ZA had suffered verbal abuse and sexual harassment from fellow students, and that although she had complained of the conduct to Howard University officials, they failed to investigate her claims.

On October 2, 2003, the court granted Howard University's motion for summary judgment with respect to the breach of contract and negligent misrepresentation claims, concluding that the statute of limitations had run prior to the filing of the civil complaint.¹ The trial court found that the facts giving rise to both causes of action transpired in the fall of 1998. Consequently, the trial court concluded that the statute of limitations on both the breach of contract and negligent misrepresentation claims expired in the fall of 2001. On February 22, 2005, the District of Columbia Court of Appeals affirmed the dismissal of the breach of contract and negligent misrepresentation claims.

In your response to our inquiry, you state that based upon your analysis of Ms. ZA's claims, her key injury occurred when she was removed from dental school in July 1999. Accordingly, you believed that filing Ms. ZA's civil complaint in January 2002 was within the statute of limitations for her claims. You also state that you believed the "lulling doctrine" applied to Ms. ZA's claims because throughout the 1998-1999 school year, she was told by Howard University officials that she could re-take the examinations in the classes she had failed. You represent that, based upon your research, Ms. ZA's claims could have been brought as late as May 2002. While you state that the facts in Ms. ZA's case fit comfortably within the lulling doctrine, you concede that "naturally one cannot know how a court will view the matter."

Based upon our investigation of this matter, we find that your conduct violated Rules 1.1(a) and 1.1(b) and 1.3(a) and 1.3(c).

Rule 1.1(a) requires a lawyer to "provide competent representation to a client," Rule 1.1(b) requires a lawyer to "serve a client with skill and care commensurate with that generally afforded to clients by other lawyers in similar matters." Comment [5] to the Rule states pertinently that "[c]ompetent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners." Rule 1.3(a) requires that a lawyer "shall represent a client zealously and diligently within the bounds of the law," and Rule 1.3(c) requires that a lawyer "shall act with reasonable promptness in representing a client."

We find that you failed to file a lawsuit on your client's behalf prior to the expiration of the statute of limitations based upon an incorrect analysis of the factual and legal elements of her claims. The court ultimately dismissed two counts of your client's complaint with prejudice based on your failure to timely file the complaint. You state that you determined that her claims

¹ Thereafter, you withdrew from the case and Ms. ZA appealed the matter *pro se*.

arose in July 1999 when she was removed from the dental school. The Court, however, found that Ms. ZA's claims accrued in the fall of 1998 because the unsanitary living conditions she complained of occurred in September and October of 1998 and the courses in which she was allegedly denied academic accommodations were held in the fall of 1998.²

Ms. ZA retained you in May 2001, approximately six months before the statute of limitations on her claims expired. Nevertheless, you failed to file the complaint until January 2002 based upon your faulty analysis of the matter.

We understand that you considered that the "lulling doctrine" may have applied to your client's claims, and if so, that the statute of limitations would have been tolled until May 2002. Under the circumstances of this case, however, your reliance on an equitable tolling doctrine was, at best, an argument to be advanced in response to the motion to dismiss Ms. ZA's claims based upon the expiration of the statute of limitations. Otherwise, to have relied upon an equitable tolling as the trigger date for your client's claims was an unacceptable gamble with your clients claims.

We conclude, that your failure to file Ms. ZA's civil complaint during the first six months of your retention compromised your client's rights to pursue her claims and, therefore, constitutes failure to act in a competent, prompt, zealous and/or diligent manner, in violation of Rules 1.1(a), 1.1(b) and 1.3(a) 1.3(c).

In deciding to issue an Informal Admonition in this matter, we have taken into consideration that you cooperated with this investigation and your misconduct did not involve dishonesty. We also credit your representation that you, in good faith, believed that your client's claims accrued in July 1999.³

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 Rule XI, § 8(c). The case will then be assigned to a Hearing

² Indeed, in your Opposition to Defendant's Motion for Summary Judgment you acknowledge that your client's claims arose in 1998.

³ Your "good faith" however is not a defense to the above-described Rules violations.

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Committee, and a hearing will be scheduled by the Executive Attorney for the Board on Professional Responsibility pursuant to D.C. Bar Rule XI, § 8(d). 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: Attachment to Letter of Informal Admonition

cc (w/o Encl.): Ms. ZA

WES/HCS/JCL/act