



# OFFICE OF BAR COUNSEL

Certified Article Number

7196 9008 9111 3910 5750

SENDERS RECORD

May 14, 2012

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***BY FIRST-CLASS AND CERTIFIED  
MAIL NO. 7196 9008 9111 3910 5750***

Brian K. McDaniel, Esquire  
McDaniel & Associates, PA  
1211 Connecticut Avenue, NW  
Suite 506  
Washington, DC 20036

Re: *In re Brian K. McDaniel, Esquire*  
D.C. Bar Membership No. 452807  
Bar Docket No. 2011-D419

Dear Mr. McDaniel:

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") and/or the North Carolina Rules of Professional Conduct ("NCRPC") made applicable to your conduct pursuant to Rule 8.5(b)(1).<sup>1</sup> We are therefore, issuing you this Informal Admonition pursuant to D. C. Bar Rule XI, §§ 3, 6, and 8.

We find that you were retained on or about March 7, 2010, by "KD" to represent him in a civil litigation against a police department in North Carolina. You and your associate, Craig L. Ricard, Esquire, worked jointly on KD's matter and were jointly responsible for the representation.

On or about March 11, 2010, you filed a lawsuit on KD's behalf with the United States District Court for the Eastern District of North Carolina, Eastern Division. The litigation pursued its normal course and the matter was scheduled

Rule 8.5(b)(1) states, "Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follow: for conduct in connection with a matter pending before a tribunal, the rules to be applied shall be the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise . . . ." We note that even if the D.C. Rules applied, the result would be the same.

for trial on August 15, 2011. You communicated the trial date to KD in early 2011. You maintained a fair amount of communication with KD until sometime in mid-2011 when his cellular telephone service was disconnected. On or about April 15, 2011, the defendant filed a motion for summary judgment. Although you filed an opposition, the court granted the defendant's motion for summary judgment on or about June 16, 2011, and dismissed KD's case. You failed to communicate this to KD. On or about July 8, 2011, you filed a Motion for Reconsideration and to Alter Judgment. The court denied your motion on or about August 18, 2011. You failed to communicate this to KD. You took no further action on KD's behalf nor did you note an appeal on his behalf pursuant to Local Civil Rules 72.4. You had no further communication with KD until or around September 22, 2011, when he called your law offices. On that date, for the first time, you informed KD that his matter had been dismissed on summary judgment several months prior. You acknowledge that there was a breakdown in communication.

Subsequently, on or about October 20, 2011, KD filed a motion for extension of time to appeal *pro se*. The defendant filed an opposition on or about October 25, 2011. In an effort to assist KD, you later filed an affidavit in support of KD's Motion for Extension of Time to Appeal. The court has not yet ruled on these motions.

Pursuant to Rule 8.5(b)(1), we reviewed your conduct under the North Carolina rules. Based upon our investigation of this matter, we find that your conduct violated NCRPC 1.1, 1.4(a)(2), 1.4(a)(3), and 1.4(b).

NCRPC 1.1 states: "...[c]ompetent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." NCRPC 1.4(a)(2) states: "[a] lawyer shall: reasonably consult with the client about the means by which the client's objectives are to be accomplished;" and NCRPC 1.4(a)(3) states: "[a] lawyer shall: keep the client reasonably informed about the status of a matter." NCRPC 1.4(b) states: "[a] lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." After being retained by KD, although you initially communicated with KD, you failed to inform him that the defendant filed a motion for summary judgment in his lawsuit, you filed an opposition, and the court granted the defendant's motion and dismissed KD's case. Additionally, you failed to inform KD that you had filed a motion for reconsideration on his behalf. You failed to otherwise communicate with KD until September 22, 2011, when KD called your law offices and spoke with you. We conclude that you violated NCRPC 1.1 by failing to preserve KD's appellate rights. Additionally, you violated NCRPC 1.4(a)(2), 1.4(a)(3), and 1.4(b) by failing to keep KD reasonably informed about the status of his matter or discussing with him the possibility of noting an appeal of the court's final decision dismissing his matter. You were not sufficiently diligent in effecting communication with KD. You admit there was a breakdown in communication and although you relied on communicating with KD primarily by telephone, you failed to pursue other means of communication that were

available to you, such as sending written correspondence to KD's last known address (which was his current address) or attempting to contact KD's family members.

In deciding to issue this letter of Informal Admonition rather than institute formal disciplinary charges against you, we have taken into consideration that you took this matter seriously, that you cooperated with our investigation, you have accepted responsibility for your actions, you have expressed remorse, you have provided KD with a full refund, you have assisted KD's efforts to note an appeal by filing an affidavit in support of his motion requesting an extension, you and the staff of your firm met with the Manager of the D.C. Bar Practice Management Advisory Services in order to learn about and implement better communication practices, you have taken the "Basic Training and Beyond" course offered by the D.C. Bar, and you have no record of public discipline, although you have been practicing in the District of Columbia since 1997.

If you would like to have a formal hearing, you must submit a written request for a hearing within 14 days of the date of this letter to the Office of Bar Counsel, with a copy to the Board on Professional Responsibility, 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) and (c). 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: Attachment letter to Informal Admonition

cc: KD (w/o enclosure)

WES/DD/jnb