



# OFFICE OF BAR COUNSEL

September 4, 2013

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**BY FIRST-CLASS AND CERTIFIED  
MAIL NO. 71969008911175209672**

Ifeolu Fabayo, Esquire  
8701 Georgia Avenue  
Suite 402  
Silver Spring, Maryland 20910

Re: Ifeolu Fabayo, Esquire  
(D.C. Bar Registration No. 982634)  
Bar Docket No. 2013-D011

Dear Ms. Fabayo:

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

Bar Counsel opened an investigation after receiving a complaint from your client about the handling of the settlement funds from her personal injury matter. Based on its investigation, including its review of bank records obtained directly from banks, Bar Counsel finds the following:

You were an associate or affiliated with the law firm of Lee & Associates, in College Park, Maryland, from no later than December 2010 through September 2012. In December 2010, the client met with Sandy Lee, the partner of the law firm, and signed a retainer agreement hiring the firm to represent her in her personal injury matter and agreeing to pay a contingency fee of one-third of any recovery before the filing of a lawsuit, and 40 percent after the filing of a lawsuit. Mr. Lee signed the retainer on behalf of the firm.<sup>1</sup>

<sup>1</sup> Mr. Lee has never been a member of the Maryland bar, but was licensed to practice law only in the District of Columbia.

On June 24, 2011, Lee & Associates filed a complaint on behalf of the client with the Circuit Court for Prince George's County, Maryland. The complaint was signed by Rosalind Lewis, Esquire, a lawyer licensed to practice law in Maryland who, in 2011, was working as a contract attorney for the law firm. In or around July 2012, Ms. Lewis terminated her relationship with Lee & Associates. On July 19, 2012, you and another lawyer associated with Lee & Associates, entered your appearances with the Maryland court as counsel for the client.

In late July 2012, the parties agreed to a settlement. Pursuant to the settlement, the defendant in the action would pay the client \$6,000, and an additional \$4,212.79 to Medicare on her behalf, and the third-party defendant would pay the client an additional \$6,000 – for a total settlement of \$16,212.79.

On August 9, 2012, prior to your receiving the settlement funds on behalf of the client, the D.C. Court of Appeals issued an order suspending Mr. Lee from the practice of law in the District of Columbia – the only jurisdiction where he had been licensed. Pursuant to the Court's order, the suspension commenced 30 days after the entry of the order. Neither Mr. Lee nor you advised the client of Mr. Lee's suspension from the practice of law.

On September 19, 2012, you opened an IOLTA account with Bank of America. On September 27, 2012, the insurance company for the third-party defendant sent you and Mr. Lee a check for \$6,000 payable to "[the client] and her Atty., Ifeolu Fabayo Esq[.]" On October 5, 2012, the insurance company for the defendant issued two checks, one for \$6,000, and another for \$4,212.79, both payable to "Law Firm of Lee & Associates and [the client]." These two checks were sent to you as counsel for the client.

On October 15, 2012, you sent the client a disbursement letter setting forth the total settlement of \$16,212.79, and the proposed disbursements: \$6,485.11 for attorney's fees; \$836.22 for unpaid medical expenses; and the balance of \$8,891.46 to the client. By the time you sent the disbursement letter, you were using letterhead for "Fabayo & Associates, LLC", which had the same office address as that of Lee & Associates.

On October 19, 2012, the client signed the disbursement letter, and endorsed the three settlement checks. That same day, you endorsed one of the insurance checks for \$6,000, and deposited it in your Bank of America trust account. Based on bank records that Bar Counsel obtained, it determined that Mr. Lee or someone acting on his behalf endorsed the other two insurance checks and deposited them in his IOLTA account at BB&T bank on October 19, 2012. Also on October 19, 2012, BB&T honored a check that Mr. Lee wrote on his IOLTA account for \$6,485.11 payable to Lee & Associates Payroll Account, with the notation "Atty fee [client]" and dated October 18, 2012. On October 22, 2012, Mr. Lee wrote a check on his BB&T IOLTA account payable to "Fabayo Associates" for \$3,727.68 with the notation "[client] medbills +client funds."

On October 22, 2012, you deposited Mr. Lee's check of \$3,727.68 in your Bank of America trust account, resulting in total deposits of \$9,727.68 from the client's settlement funds. On October 25, 2012, you sent a check for \$8,891.46 to the client, and a check for \$836.22 to counsel for her medical insurer. Both checks were drawn on your Bank of America trust account. On October 30 and 31, 2012, Bank of America honored the checks payable to the client and counsel for her medical insurer.

In investigating the client's complaint, Bar Counsel served you with a subpoena *duces tecum* directing you to provide complete records of your handling of the client's settlement funds. In response to the subpoena and Bar Counsel's follow-up letters, you provided incomplete records. Specifically, you provided the following records or documents: the second page of the monthly bank statement for October 2012, reflecting the deposits, withdrawals, other debits, and daily balances for your Bank of America IOLTA account; a copy of the \$8,891.46 check payable to the client; the retainer agreement; the settlement disbursement letter; the cover letters to the client and counsel for the medical insurer; and copies of the three settlement checks. You did not provide any records relating to the deposit of the two settlement checks from the other insurance company totaling \$10,212.79 or the disbursement of the funds from Mr. Lee's IOLTA account. You disclosed only that you had deposited two checks into your own IOLTA account, the first for \$6,000 on October 19, 2012, and the second for \$3,727.68 on October 22, 2012.

Rule 1.15(a) requires lawyers to keep "complete records" of entrusted funds and preserve such records for five years after the termination of the representation. Similarly, D.C. Bar R. XI, § 19(f) requires lawyers to "maintain complete records of the handling, maintenance, and disposition of all funds . . . belonging to another person . . . at any time in the attorney's possession, from the time of receipt to the time of final distribution" and also requires that the records be preserved for five years. In *In re Clower*, 831 A.2d 1030 (D.C. 2003), the Court explained that:

The purpose of maintaining "complete records" is so that the documentary record itself tells the full story of how the attorney handled client or third-party funds and whether the attorney complied with his fiduciary obligation that client or third-party funds not be misappropriated or commingled. Financial records are complete only when documents sufficient to demonstrate an attorney's compliance with his ethical duties are maintained. The reason for requiring complete records is so that an audit of the attorney's handling of client funds by Bar Counsel can be completed even if the attorney or the client, or both, are not available.

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Bar Counsel finds that by failing to keep, preserve, and produce to Bar Counsel complete records of your client's settlement funds, you violated Rule 1.15(a) and D.C. Bar R. XI, § 19(f), and the counterpart provisions of the Maryland Rules of Professional Conduct as made applicable by D.C. Rule 8.5(b)(2)(ii).

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 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.): The Client

WES:JLP:act