



OFFICE OF BAR COUNSEL

October 10, 2013

**CERTIFIED MAIL NO. 7196 9008 9111 9518 1880
AND FIRST CLASS MAIL**

Certified Article Number

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Harry Tun, Esquire
400 Fifth Street, N.W.
Suite 300
Washington, D.C. 20001

Re: *In re Harry Tun*
D.C. Bar Registration No. 416262
Bar Docket No. 2009-D381

Dear Mr. Tun:

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 §§ 3, 6, and 8.

We docketed this matter on September 1, 2009, based upon a complaint filed in connection with your representation of Cordell Smith in a criminal matter styled as *United States of America v. Cordell Smith*, Case No. 2007-CFI-008380, in the Superior Court of the District of Columbia. Mr. Smith was sentenced to twenty-three years of imprisonment after being convicted of second degree murder, possession of a firearm during a crime of violence, and carrying a pistol without a license. During the course of our investigation, we discovered information that raises issues about your professional conduct.

Before Mr. Smith's trial commenced, the prosecutor filed a motion to disqualify you as Mr. Smith's lawyer, alleging that you witnessed an individual (MB) attempt to influence the testimony of a government witness (SB).¹ The prosecutor intended to call you as a witness before the grand jury and at trial to testify about MB's attempt to obstruct justice, and argued that your testimony would conflict with your obligations as Mr. Smith's defense lawyer. See Rule 3.7 (prohibiting a lawyer from acting as an advocate at a trial in which the lawyer is likely to be a witness).

According to the prosecutor, MB attempted to influence SB's testimony while you were interviewing SB as part of your pre-trial investigation. MB was not a professional investigator, but a friend of Mr. Smith's whom you enlisted to witness your interview with SB and also to show you around the neighborhood and specific location

¹ For security reasons, the motion itself does not specifically describe the facts of MB's attempted obstruction, but makes only general allegations. Bar Counsel's review of the court record, including transcripts, revealed the precise facts on which the prosecutor's motion was grounded.

where the crime occurred. During your interview of SB at her apartment, SB and MB left the room where you were conducting the interview and went into a nearby bedroom, but left the door open. You could see MB and SB in the bedroom having a conversation, but you could not hear them. When SB and MB returned to the living room, SB asked you if she could avoid testifying at trial by invoking the Fifth Amendment.

You stated, "You have no grounds to take the Fifth Amendment. No grounds. No legal grounds to take the Fifth Amendment."

MB said, "Don't plead the Fifth."

Because of the prosecutor's motion to disqualify you, the court postponed the trial and appointed counsel to advise Mr. Smith regarding the prosecutor's allegations, Mr. Smith's constitutional right to effective assistance of counsel, and Mr. Smith's options. After being advised by the court-appointed lawyer, Mr. Smith informed the court that he would like for you to continue as his lawyer. Nevertheless, you eventually withdrew from the matter and upon your recommendation Mr. Smith retained another lawyer.

The government indicted MB for obstruction of justice, but he was eventually acquitted by a jury.

We find that your conduct violated Rule 4.3(a)(1) entitled, "Dealing With Unrepresented Person," providing as follows:

- (a) In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not: (1) Give advice to the unrepresented person other than the advice to secure counsel, if the interests of such person are or have a reasonable possibility of being in conflict with the interests of the lawyer's client; . . .

When you interviewed SB, you were acting on behalf of your client, Mr. Smith. In addition, you knew that SB was unrepresented and that there was a "reasonable possibility" that her interests would be "in conflict" with your client's interests. Therefore, when SB asked you for advice regarding her constitutional rights, you should have said that you could not advise her, or advised her to secure her own counsel. Instead, you advised her that she had no Fifth Amendment grounds to avoid testifying against Mr. Smith. By doing so, you violated Rule 4.3(a)(1).

In issuing this informal admonition Bar Counsel has taken into consideration that you have cooperated with Bar Counsel's investigation, and that you have accepted responsibility for your actions by accepting this informal admonition.

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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

WES:JNB:pjp