



OFFICE OF BAR COUNSEL

October 21, 2015

VIA FIRST-CLASS REGULAR MAIL
AND CERTIFIED MAIL NO. 9414 7266 9904 2001 4749 15

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In re John W. Davis, Esquire
(D.C. Bar Registration No. 931600)
Bar Docket Nos. 2012-D153, 2014-D106
& 2014-D383

Dear Mr. Davis:

The Office of Bar Counsel has completed its investigation of the above captioned matters. Because it finds that your conduct reflected a disregard of certain ethical standards under the District of Columbia Rules of Professional Conduct (the Rules), Bar Counsel is issuing you this Informal Admonition pursuant to D.C. Bar R. XI, §§ 3, 6, and 8.

Bar Counsel's Investigations

- ***2012-D153: Rule Violations: Rules 1.4(b) and 1.5(b)¹***

You represented SAD in her efforts to resolve her unfavorable employment situation. She reports that she was discriminated against at her job. You also agreed to represent three of her colleagues who had similar complaints. However, you did not provide your clients, including SAD a writing setting forth the basis or rate of your fee or the scope of the representation.

You undertook to represent SAD's interests in addressing her employment situation, including making amendments to her Equal Employment Opportunity Commission complaint, reviewing the responses submitted by her employer, and writing the EEOC field office and her employer. As the representation progressed over the next two years, you assigned SAD important tasks that you expected her to undertake to help build her case including preparing discovery responses; SAD expected you to do these tasks. In addition, the timeframes when each of you expected to receive documents from the other were unclear. Your client had made partial payment of your fee but you did not specifically communicate your expectations of her responsibilities in prosecuting the case.

¹ The Rules Bar Counsel concludes you violated are appended to this letter.

As a result, the professional relationship disintegrated. You and she ended the relationship before her matter completed the administrative phase.

You acknowledge that you did not always provide your client with pertinent information about her case, including, for example, that you had not asked for an additional extension to file a rebuttal to her employer or that the EEOC investigator had agreed to accept the rebuttal out of time.

Under **Rule 1.4(b)**, you were obligated to explain the matter to the extent reasonably necessary to permit your client to make informed decisions regarding the representation. Under **Rule 1.5(b)**, when the lawyer has not regularly represented the client, the basis or rate of the fee, the scope of the lawyer's representation, and the expenses for which the client will be responsible must all be communicated in writing within a reasonable time after undertaking the representation. You breached each of these Rules in **SAD's** case because you failed to clarify for your client your expectations of the amount of work you contemplated her handling to develop her own her case, and because you failed to consult with her regarding important tactical decisions you made, most of which should have been addressed in the retainer agreement, had you provided her one. Indeed, you were obligated to communicate with your client by setting forth the scope of the representation with enough specificity for her to decide whether to retain you – understanding that you expected her to do many of the important tasks herself and that you would make certain types of decisions without consultation.

• **2014-D106: Rule Violations: 1.1(a) & (b), 1.3(a) & (c), 8.4(d)**

You represented **EGAH** in a District of Columbia Superior Court civil case in which you missed several filing deadlines – including to respond to a summary judgment motion filed by the opposing party – and failed to attend at least two mediations. You asserted in pleadings throughout the litigation that you were struggling with depression and various other health ailments. Your client (who did not file the disciplinary complaint) was aware of your challenges when she retained you, and states that you explained that you “might have to seek a stay or extension of time on those occasions when his health would interfere with his ability to perform certain tasks.”²

Under **Rules 1.1(a) and (b)**, you were obligated to represent your client competently, including with the thoroughness required for the representation, and at a level of practice that did not fall below the standard of care. Under **Rules 1.3(a) and (c)**, you were obligated to serve your client with diligence and zeal, and to attend to her interests promptly. Under **Rule 8.4(d)**, you had an obligation to not seriously interfere with the administration of justice. You breached each of these Rules in **EGAH's** case when you failed to file your client's pleadings on time and to appear

2 The complaint was filed by opposing counsel.

at mediations, wasting the time of both the court and opposing party, and placing your client's interests at risk.

- **2014-D383: Rule Violations 1.3(a) & (c), 1.4(b)**

You represented **BPG** in multiple matters against his employer intermittently from 2009 through early 2015. Your evaluation of the relative merits of the cases varied, as did your level of involvement. At times, **BPG** represented himself *pro se* before administrative bodies, after which you at times became involved at the appellate level – sometimes in federal court and sometimes in D.C. Superior Court. Sometimes, you entered your appearance as **BPG**'s counsel; other times you helped him prepare his pleadings but did not file them on his behalf.

Your reasons for entering or not entering your appearance in a given case also varied: sometimes you were unwilling to proceed because you believed the case was meritless; other times, **BPG** did not have the funds to retain your services as counsel. You stated that even though **BPG**'s cases were often weak and he had insufficient funds to retain you, he often convinced you to help him identify issues and edit his pleadings as best as could be managed under the circumstances.

During those occasions when you represented **BPG**, *i.e.*, he was not *pro se*, a review of the court records reveals that you missed multiple deadlines – including to respond to dispositive motions – and at least one of your client's cases (a federal court action) was dismissed without prejudice. You concede that you did not always consult with **BPG** about your tactical decisions in his cases – including your decision not to respond to a dispositive motion – and that there came a time when meaningful communication had broken down between you.

You continued to represent **BPG** in his employment matters, pursuing what you considered more viable claims in federal court until you filed a motion to withdraw as counsel in January 2015; successor counsel entered her appearance in February 2015.

Again, although you and **BPG** had a professional relationship that took various forms, there were times when you undertook to represent his interests and became his attorney of record in both federal court and D.C. Superior Court. Under **Rules 1.3(a) and (c)**, you were obligated to serve your client with diligence and zeal, and to attend to his interests promptly. Under **Rule 1.4(b)**, you were obligated to explain the matter to the extent reasonably necessary to permit your client to make informed decisions regarding the representation. You breached each of these Rules in **BPG**'s case when you failed to protect your client's interest in maintaining his actions by filing necessary pleadings on time, thereby placing **BPG**'s causes of action at risk, without discussing the potential consequences of your decisions with him in a meaningful way that would permit him to decide on the best course to proceed.

Mitigating Factors

Our decision not to institute formal proceedings was a close call. We have determined an Informal Admonition is appropriate because (1) you have agreed to accept it; (2) we do not have clear and convincing evidence that you actually prejudiced any of your clients' matters; (3) you were remorseful during your meeting with Bar Counsel and recognized the problems caused by how you handled their cases; and (4) you have begun consulting with the D.C. Bar's Practice Management Advisory Service to conduct a thorough review of your practice to avoid common pitfalls of practice, and have waived confidentiality permitting Bar Counsel access for all purposes to the results of your practice's review and audit.

Bar Counsel believes that the lack of proof of actual harm to your clients' cases, combined with your commitment to avoid further disciplinary problems by undertaking a practice review, sufficiently discharges the disciplinary system's obligations to protect the integrity of the courts and the consuming public, and to deter similar misconduct by you or other practitioners.

However, this Informal Admonition is contingent on your completing the D.C. Bar's Practice Management Advisory Service audit within 60 days of the date of this letter. If you fail to comply with the terms of the Informal Admonition, Bar Counsel will vacate it and institute formal disciplinary proceedings.

Conclusion

Bar Counsel issues this Informal Admonition pursuant to D.C. Bar R. XI, §§ 3, 6, and 8, and it is public when issued. The Informal Admonition previously issued on December 16, 2014 in **2012-D153** is vacated on issuance of this letter, which includes that case. Attached to this letter of Informal Admonition is 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 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 you request a hearing, this Informal Admonition will be vacated, and Bar Counsel will institute formal charges pursuant to D.C. Bar R. XI, § 8 (c). The case will then be assigned to a hearing committee, and a hearing will be scheduled by the Board on Professional Responsibility. D.C. Bar R. XI, § 8(d). 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.

John W. Davis, Esquire
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Sincerely,

Wallace E. Shipp, Jr.
Bar Counsel

Encl.: Attachment to Letter of Informal Admonition

cc: SAD
PEY
BPG

WES:TMT:ch

- ***Rule 1.1 – Competence***

- (a) A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.
- (b) A lawyer shall serve a client with skill and care commensurate with that generally afforded to clients by other lawyers in similar matters.

- ***Rule 1.3 – Diligence and Zeal***

- (a) A lawyer shall represent a client zealously and diligently within the bounds of the law.
- ***
- (c) A lawyer shall act with reasonable promptness in representing a client.

- ***Rule 1.4 – Communication***

- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

- ***Rule 1.5 — Fees***

- (b) When the lawyer has not regularly represented the client, the basis or rate of the fee, the scope of the lawyer's representation, and the expenses for which the client will be responsible shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation.

- ***Rule 8.4 – Misconduct***

It is professional misconduct for a lawyer to:

- (d) Engage in conduct that seriously interferes with the administration of justice;