



# OFFICE OF DISCIPLINARY COUNSEL

January 8, 2016

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***VIA FIRST-CLASS REGULAR  
AND CERTIFIED MAIL NO. 9414 7266 9904 2039 4837 50***

Bernard A. Gray, Sr.  
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Washington, D.C. 20020

***In re Bernard A. Gray, Sr., Esquire  
D.C. Bar No. 955013  
Bar Docket No. 2014-D035***

Dear Mr. Gray:

The Office of Disciplinary Counsel has completed its investigation of this matter. We find that your conduct reflected a disregard of certain ethics standards under the District of Columbia Rules of Professional Conduct (the Rules). We are issuing you this Informal Admonition pursuant to D.C. Bar R. XI, §§ 3, 6, and 8.

Disciplinary Counsel docketed this matter for investigation based on a slip opinion from the District of Columbia Court of Appeals that you mishandled a landlord-tenant matter for a client, CJ. The facts are as follows:

On May 27, 2011, the D.C. Office of Administrative Hearings ruled against your client in a landlord-tenant administrative matter. Shortly, thereafter, you consented to the landlord's plan to move for a lift of the *Drayton* stay, which would have required your client to relinquish possession of the rental property to the landlord.<sup>1</sup> The landlord's consent motion stated that the hearing

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1 The District of Columbia Court of Appeals has noted:

*Drayton* holds that, given the [Rental Housing Commission]'s primary jurisdiction over the interpretation and implementation of the District of Columbia's rent control law, the landlord and tenant court must await the outcome of any appeal to the RHC when confronted with a suit for possession in which the amount

(Continued...)

hearing on the motion was set in the D.C. Landlord and Tenant Courtroom for October 22, 2012 at 10:00 a.m. Although, opposing counsel certified in the motion that it had been mailed to you, you and your client failed to appear. The court lifted the stay and entered a default in the landlord's favor, scheduling a further hearing for November 5, 2012. Although the court's docket reflects notice was mailed to you as CJ's counsel and not returned, neither you nor your client appeared. The court granted the landlord possession of the rental unit, calculated a significant sum as the amount of money your client owed the landlord, and released to the landlord the funds your client had already paid into the court's registry.

Your subsequent efforts to set aside the default judgment were rejected by both the trial court and the District of Columbia Court of Appeals as dilatory and paltry. The Court of Appeals concluded that your excuses for the missed hearings – *i.e.*, your “vague explanation . . . that [you] ‘did not have knowledge of the date of the hearing *or* failed to place the date on [your] calendar’” – gave the trial court “a further example of that less-than-diligent approach”; the Court of Appeals concluded that your conduct did not constitute excusable neglect. (Emphasis added by Appeals Court.)

In response to Disciplinary Counsel's investigation, you state in pertinent part:

During the period of time in question I had 17 cases and two medical appointments that needed action.

I discussed my actions with my clients and prioritized them for taking action. I made a judgment decision based on case law and my experience and executed that decision.

Based on past experience I have never had a judge consider three weeks a delay and not set aside a default judgment under the circumstances and I have been practicing law since 1976. [I started as a law student.]

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(... continued)

of rent is in dispute”; this “means that the landlord ha[s] no right to have the stay lifted while appellant's administrative appeal was pending. On the contrary, appellant ha[s] a right to a continuation of the stay throughout the pendency of [the] appeal to the RHC, and perhaps even beyond.

*Mack v. Zalco Realty, Inc.*, 630 A. 2d 1136, 1139, 1140 (D.C. 1993).

Although the pressures from your law practice and health concerns at the time in question were unfortunate, they cannot excuse your failure to defend your client's interests, given that you were his advocate. Under Rules 1.1(a) and (b), and Rule 1.3(a), you were obligated to represent your client with competence, diligence and zeal.<sup>2</sup> Your failure to assert and protect his interests in (1) negotiating the surrender of the rental property in which he lived and (2) calculating the amounts he purportedly owed the landlord violated each of these Rules.

This letter constitutes an Informal Admonition for violating Rules 1.1(a) and (b), and Rule 1.3(a), pursuant to D.C. Bar Rule XI, §§ 3, 6, and 8, and is public when issued. We have decided to issue an Informal Admonition because you have agreed to accept it, have cooperated with our investigation, and most importantly, agreed to consult with the D.C. Bar's Practice Management Advisory Service to conduct a review of your practice to avoid common pitfalls of practice, with particular emphasis on client communication, developing systems to ensure proper calendaring, and management of work flow. ***You agree to waive confidentiality regarding your practice's review and audit and to permit Disciplinary Counsel to use as Disciplinary Counsel deems necessary the results of the audit for future reference in any subsequent disciplinary complaint against you.***

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, should you change your mind about accepting it. If you would like to have a formal hearing, you must submit a written request for a hearing to the Office of Disciplinary Counsel, with a copy to the Board on Professional Responsibility, within 14 days of the date of this letter, unless Disciplinary Counsel grants an extension of time. If a hearing is requested, this Informal Admonition will be vacated, and Disciplinary 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 Executive Attorney for the Board on Professional Responsibility pursuant to

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**2 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.

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D.C. Bar R. 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 yours,

Wallace E. Shipp, Jr.  
Disciplinary Counsel

Encl.: Attachment to Letter of  
Informal Admonition

WES:TMT:adlt