



# OFFICE OF DISCIPLINARY COUNSEL

July 28, 2017

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**BY FIRST-CLASS AND CERTIFIED  
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Harry S. Max, Esquire  
1754 L Street, NE  
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Washington, D.C. 20002

*In re Harry S. Max, Esquire*  
**D.C. Bar Registration No. 1021553**  
**Disciplinary Docket No. 2016-D332**

Dear Mr. Max:

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 XI, §§ 3, 6, and 8.

You and your firm represented the plaintiff in a personal injury action that was filed in the Circuit Court for Prince George's County, Maryland. Another partner in your firm, who is a member of the Maryland Bar, signed the civil complaint filed with the Maryland court. After the civil complaint was filed, you were the counsel who interacted with defense counsel, and the only counsel for plaintiff who participated in a telephonic prehearing conference with the judge, defended plaintiff at her deposition, took the depositions of the defendant and a witness, appeared as plaintiff's counsel in the depositions of three additional witnesses, and prepared and responded to discovery requests. You were not a member of the Maryland Bar when you engaged in these activities and had not sought admission *pro hac vice* in the case.

*Serving the District of Columbia Court of Appeals and its Board on Professional Responsibility*

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In early June 2016, you advised defense counsel that you would be the trial attorney in the case. In early August 2016, approximately one and a half months before the scheduled trial, defense counsel learned that you were not admitted to the Maryland Bar. When defense counsel contacted you on August 5, 2016, you admitted you were not licensed in Maryland, but said you intended to file a motion for *pro hac vice* admission. Ten days later, the lawyer in your firm who was a member of the Maryland Bar (and who had signed the civil complaint), filed a motion seeking your admission *pro hac vice*. The motion requested that your admission “be applied retroactively from the inception of this matter through its conclusion to include all depositions, court proceedings, and discovery.” Defense counsel responded to the motion, outlining your activities in the case thus far, and requesting a hearing on your motion. On September 20, 2016, the Maryland court denied the petition for your admission *pro hac vice*. Your client’s case settled and was dismissed on September 23, 2016.

We find that your conduct violated Rule 5.5(a) – the rule that prohibits a lawyer from “practic[ing] law in a jurisdiction where doing so violates the regulation of the legal profession in the jurisdiction.” Maryland Rule 19-214, governing Special Admission of Out-of-State Attorneys Pro Hac Vice, provides in relevant part:

**(a) Motion for Special Admission.**

(1) *Generally.* A member of the Bar of this State who (A) is an attorney of record in an action pending (i) in any court of this State, . . . may move that an attorney who is a member in good standing of the Bar of another state be admitted to practice in this State for the limited purpose of appearing and participating in the action as co-counsel with the movant.

*(2) Where Filed.*

(A) If the action is pending in a court, the motion shall be filed in that court.

\* \* \*

(3) *Other Requirements.* The motion shall be in writing and shall include the movant's certification that copies of the motion have been served on the agency or the arbitrator or arbitration panel, and all parties of record.

(b) **Certification by Out-of-State Attorney.** The attorney whose special admission is moved shall certify in writing the number of times the attorney has been specially admitted during the twelve months immediately preceding the

filing of the motion. The certification may be filed as a separate paper or may be included in the motion under an appropriate heading.

(c) **Order.** The court by order may admit specially or deny the special admission of an attorney. In either case, the clerk shall forward a copy of the order to the State Court Administrator, who shall maintain a docket of all attorneys granted or denied special admission. When the order grants or denies the special admission of an attorney in an action pending before an administrative agency, the clerk also shall forward a copy of the order to the agency.

(d) **Limitations on Out-of-State Attorney's Practice.** An attorney specially admitted pursuant to this Rule may act only as co-counsel for a party represented by an attorney of record in the action who is admitted to practice in this State. The specially admitted attorney may participate in the court or administrative proceedings only when accompanied by the Maryland attorney, unless the latter's presence is waived by the judge or administrative hearing officer presiding over the action. An attorney specially admitted is subject to the Maryland Attorneys' Rules of Professional Conduct during the pendency of the action or arbitration.

You admitted you were not a member of the Maryland Bar when you represented the plaintiff. You nevertheless appeared alone as counsel for plaintiff at a prehearing conference and at depositions, which are court proceedings. You also propounded and responded to discovery in the proceedings. It was only after defense counsel learned you were not a member of the Maryland bar and confronted you, that your partner finally took steps to file a petition seeking your admission *pro hac vice*. The court denied the petition. We find that your actions as counsel for plaintiff in the Maryland action violated the Maryland Rules and Rule 5.5(a).

In deciding to issue you this informal admonition rather than seek a greater sanction, we have considered that you acknowledged that your conduct violated the Rules, including by accepting this informal admonition, and your client did not suffer any prejudice based on your misconduct.

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 within 14 days of the date of this letter to the Office of Disciplinary Counsel, with a copy to the Board on Professional Responsibility, 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 Rule XI, §§ 8(b) and (c). The case will then be

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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(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,

Hamilton P. Fox, III  
Disciplinary Counsel

Enclosure: Attachment letter to Informal Admonition

cc: Complainant

HPF:JLP:act