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October 6, 2017

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CONFIDENTIAL

**BY FIRST CLASS AND CERTIFIED
MAIL NO. 9414-7266-9904-2091-4473-63**

Donald Schlemmer, Esquire
c/o Herbert Dubin, Esquire
611 Rockville Pike
Suite 225
Rockville, MD 20852

Re: In re Donald L. Schlemmer
Bar No. 414582
Disciplinary Docket No. 2017-D143

Dear Mr. Schlemmer:

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 R. XI, §§ 3, 6, and 8.

We opened an investigation based upon your client's allegation that you failed to diligently represent her in an immigration matter. She stated, among other things, that you failed to appear for a court hearing, arrived an hour and a half late for another court hearing, and failed to prepare her for her asylum interview or her court hearing. She also stated that your assistant refused to provide a copy of her file to her upon her request.

We find as follows: Your retainer agreement was a flat fee agreement for immigration representation. The wording of your retainer agreement violates the Rules. That is, your retainer agreement uses the term "nonrefundable" and states that you have earned the fee at the time of the signing of the written agreement because "most of the work will have been done before [the client] signs the retainer." This language and representation is prohibited by Rule 1.5(a). *See also In re Mance*, 980 A.2d 266 (D.C. 2009). However, we do

not have evidence that you later refused a refund based upon the “nonrefundable” language in your retainer agreement and the entire flat fee was not paid at the time of the signing of the agreement. By the time that the entire flat fee was paid, sufficient work had been performed by you to justify your belief that it had been earned. If you had taken the entire flat fee at the time of the signing of the agreement and used it as if it were yours, this office may have considered charging you with misappropriation, if that taking was not done with informed consent.

The language in your retainer agreement is also confusing. *Mance* requires that a client be informed of all the advantages and disadvantages of your placing the retainer in an operating account. The retainer agreement should be clearly written and the client must understand the agreement. While we do not have sufficient evidence to prove that the client in this case was uninformed, you have agreed to consult with the D.C. Bar Management Service to discuss how a retainer agreement could be better written.

While we do not find any other Rule violations, we caution you to advise clients, prior to their signing a retainer agreement wherein you agree to attend all court hearings, that you cannot attend the client’s initial court hearing when you are aware of this information at the time of the signing of the retainer agreement. We also advise you that it would have been a better practice for you to provide the merits hearing date to your client in writing, either by a reminder letter or by sending her a copy of the court’s order. Because it is easy to forget or mishear a date, this would have been a prudent step to take and a way to ensure good communication with a client.

Finally, neither you nor your assistant may categorically refuse to provide a client’s file to the client in paper form. We do not find a Rule violation because it appears that the file was emailed to the successor attorney soon after your office refused to provide it to the client. However, please be aware that the client has the right to obtain a copy of the file in a format that is accessible to her. *See* Legal Ethics Opinion 357 (Dec. 2010).

In deciding to issue this letter of Informal Admonition rather than institute formal disciplinary charges against you, we have taken into consideration that you cooperated with our investigation, you have agreed to change the improper language in your retainer agreement, you have agreed to consult with Daniel Mills of the D.C. Bar Practice Management Service about retainer agreements, and you have accepted responsibility for your misconduct, including by accepting this Informal Admonition.

This letter constitutes an Informal Admonition for your violation of the Rules, pursuant to D.C. Bar R. 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

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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 you request a hearing, this Informal Admonition will be vacated, and Disciplinary Counsel will institute formal charges pursuant to D.C. Bar R. XI, § 8 (b). 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 R. 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

Encl: Attachment to Letter of Informal Admonition

HPF:EAH:eaf