



OFFICE OF DISCIPLINARY COUNSEL

January 11, 2018

**BY FIRST-CLASS AND CERTIFIED
MAIL NO. 9414726699042091447677**

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In re Denise M. Clark, Esquire
D.C. Bar Registration No. 420480
Disciplinary Docket No. 2016-D203

Dear Ms. Clark:

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.

We docketed this matter for investigation based on a complaint filed against you by your former client (referred to herein as "Complainant"), alleging that you filed his federal discrimination claim outside the statutory 90-day deadline, causing his claim to be dismissed. We find as follows:

On or about December 11, 2013, Complainant initiated a discrimination complaint against his former employer, the Federal Housing Finance Agency (the "Agency"). In accordance with regulations for discrimination complaints against federal employers, Complainant was required to exhaust his administrative remedies before he could file a claim in federal court. The federal agency investigated the complaint and generated a report of its investigation. On May 4, 2015, the federal agency issued a Final Agency Decision ("FAD") denying Complainant's claim. Complainant received and signed for the FAD the next day, May 5, 2015. Complainant had 90 days, or until August 3, 2015, from his receipt of the FAD to file a claim in federal court.

On July 6, 2015, Complainant e-mailed you about his employment case, informing you that he had received an FAD in his case and that he had "about a month" to file a complaint in federal court. Complainant was unable to meet until July 17, however. On July 17, 2015, Complainant met with you and signed a retainer agreement with your firm. He also provided you with various documents related to his case, but he did not provide a copy of the FAD.

Complainant told you, however, that he believed he received an FAD in early May, on or about May 8 or May 9, 2015. You state that at the close of your meeting with Complainant, you informed him to bring the FAD back to your office with his retainer check.

On July 27, 2015, your paralegal sent an e-mail to Complainant indicating that the deadline to file his federal complaint was August 7, 2015, which you state you calculated was 90 days from May 9, 2015. The deadline you calculated was four days late because Complainant had in fact received the FAD on May 5, 2015.

Under your supervision, an associate at your firm prepared a draft complaint that was sent to Complainant on August 3, 2015. Under the heading, "Exhaustion of Administrative Remedies," the complaint stated that no FAD had been issued within 180 days of the complaint filed with the Agency.¹ You explain that your associate drafted the complaint as if no FAD had been issued because there was none in the file. You further explain that you were unsure whether the Agency had issued an FAD because Complainant never provided one, and you believed Complainant may have been mistaken when he told you about receiving an FAD. Nonetheless, you did not follow up with Complainant to clarify whether and when he received an FAD. Your office finalized and filed the Complaint on August 7, 2015—four days after the deadline.

On November 8, 2015, you notified Complainant that you intended to withdraw as his attorney based on his failure to make payments under the terms of the retainer agreement. At that time, neither Complainant nor you were aware that the federal action had been filed out of time. On November 25, 2015, the Agency filed a motion to dismiss. You informed Complainant that the Agency had moved to dismiss his case and that you would ask for an extension of time for Complainant to find new counsel and respond to the motion to dismiss. On December 7, 2015, you filed a motion to withdraw and for an extension of time for Complainant to find new counsel. The court granted the motion.

Complainant hired successor counsel, who timely opposed the motion to dismiss. The court nonetheless dismissed Complainant's case because the federal complaint was filed out of time.

In your response, you explained that the reason for miscalculating the 90-day filing deadline is that Complainant gave you an incorrect date about when he received the FAD, he did not provide you with a copy of the FAD, and he did not correct the draft complaint's assertion that no FAD was issued. Even so, you clearly understood that the status of the FAD was uncertain. Complainant did not provide you a definitive date that he received the FAD. Rather, he told you he believed it was in early May, around May 8 or May 9, 2015. This ambiguity had to be resolved

¹ A complainant must exhaust their administrative remedies before filing their claim in federal court. Generally, a complainant may file their claim in federal court within 90 days of their receipt of an FAD denying their claim. Or, they may file in federal court if no FAD has been issued within 180 days of the filing of a complaint with the federal employer.

to correctly determine the statutory deadline. Moreover, you believed that no FAD may have been issued because you never received one. But despite contrary information from your client, you did not follow up with him or specifically ask him about any FAD. Nor did you communicate the importance of determining the precise FAD receipt date. Moreover, you did not take any other steps, such as contacting the Agency, to determine precisely whether and when an FAD was issued and received.

Although there are times when an attorney must reasonably rely on the information or documents provided by their clients, determining the precise FAD receipt date was critical, and you had ambiguous, conflicting information. Without further investigation or confirmation, it was unreasonable for you to rely on either your client's vague assertions about when he received the FAD or on the fact that he did not provide you a copy. Under these circumstances, we find that you violated your obligations under Rules 1.3(a) and (c) (diligence and promptness).²

In deciding to issue you this informal admonition rather than seek a greater sanction, we have considered the following: you have no prior discipline; you acknowledged your misconduct, including by accepting this informal admonition; you cooperated fully with our investigation; you agreed to refund Complainant for the attorneys' fees he paid; and despite the confusion about the correct filing deadline, you otherwise actively pursued your client's claims.

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 change your mind and 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 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.

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² Rule 1.3(a) provides that "[a] lawyer shall represent a client zealously and diligently within the bounds of the law." Rule 1.3(c) provides that "[a] lawyer shall act with reasonable promptness in representing a client."

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Sincerely,

Hamilton P. Fox, III
Disciplinary Counsel

Enclosure: Attachment letter to Informal Admonition

cc: Complainant

HPF:SPO:itm