



OFFICE OF DISCIPLINARY COUNSEL

August 15, 2019

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James R. Klimaski, Esquire
Klimaski & Associates, PC
1717 N Street, N.W.
Suite 200
Washington, D.C. 20036

Re: *In re James R. Klimaski, Esquire*
D.C. Bar Registration No. 243543
Disciplinary Docket No. 2018-D077

Dear Mr. Klimaski:

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 ("Rules"). We are, therefore, issuing you this Informal Admonition pursuant to D.C. Bar Rule XI, §§ 3, 6, and 8. Informal Admonition is the most lenient form of public discipline available.

We docketed this matter based upon a complaint filed by your former client JWE and conclude that your conduct was not consistent with the Rules.

Relevant facts

JWE, a Marine aviator, was involuntarily removed from flight duty because of an adverse medical examination and report by Navy doctors. JWE disputed the report. In his complaint, JWE states that in "May 2016 I was permanently removed from the squadron without appearing before any form of military board, without any opportunity to challenge my removal and to the best of my knowledge without [proper] military procedures being followed."

In May 2016, JWE first consulted with you regarding his removal from flight duty. On October 7, 2016, he retained you to regain his flight status as

an aviator and, on November 1, 2016, he paid an initial retainer of \$5,000, which you deposited into your IOLTA account. Over the course of the representation, JWE entrusted an additional \$7,500 to you, for a total of \$12,500. During the representation, you paid yourself \$8,400 in legal fees and the remaining \$4,100 to a medical expert you hired to review JWE's medical records and to prepare a report rebutting the disputed medical report.

You state in your response that JWE initially told you that he had been "permanently removed" from flight status. Based on this information, you told him that you would appeal his removal to a "board." However, in late 2017, a year after JWE retained you, you learned that JWE had not been permanently removed from flight duty, but only suspended.¹ Before a Marine aviator can be permanently removed from flight duty for medical reasons, the Marines must convene a Field Flight Performance Board (FFPB) to take evidence, including testimony, and to issue a "Report" recommending the aviator's flight status. An aviator may appeal an adverse FFPB Report to the Flight Status Selection Board (FSSB). This procedure is not available to Marine aviators who have been suspended, but not permanently removed.

Notably, you already had information in your file indicating that JWE had been suspended but not permanently removed from flight status. Before JWE retained you, he asked a United States Senator for assistance. The Senator sent a letter to the Department of the Navy inquiring about JWE's flight status. On December 9, 2016, two months after he retained you, JWE sent you a copy of the Navy's response to the Senator's inquiry. That letter, dated December 6, 2016, made it clear that JWE had not been permanently removed from flight status, and it provided detailed instructions on how JWE could be returned to flight status. You placed this letter in your case file, apparently without reading it.

By the time you realized that JWE had not been permanently removed, JWE had already paid you \$8,395.45 in legal fees, and you had already paid \$4,100 out of JWE's entrusted funds to your medical expert. The legal fees were almost entirely for six to twelve-minute telephone calls and e-mailing with JWE or your expert. There were no charges for researching and drafting the appeal you were supposed to be preparing for JWE.

On October 5, 2017, you sent an e-mail to JWE explaining that your medical expert would complete his report "before the end of next week." You further stated, "The question is, who do we deliver the report to? . . . Who is the person who gets to decide on your flight status?" These questions revealed your ignorance regarding applicable procedures. JWE answered that he did not know who the report should be sent to.

We find that your conduct violated the following Rules of Professional Conduct:

¹ You stated in a January 17, 2018 e-mail to JWE that you did not learn of his correct flight status until late 2017, one year after you were retained.

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.

Comment [5] to Rule 1.1 states that, “[c]ompetent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation and continuing attention to the needs of the representation to assure that there is no neglect of such needs. . . .”

You failed to adequately investigate the circumstances of JWE’s removal from flight duty and, as a result, provided incorrect advice. You thus rendered incompetent representation to your client. When JWE incorrectly told you he had been “permanently” removed from flight duty, you should have immediately asked him to produce the FFPB’s Report, and its supporting documentation, including transcripts. He would have responded that there was no procedure before the FFPB and therefore no FFPB Report. But, because you did not investigate his status and research the applicable procedure, it took a year for you to discover this fact, despite your receipt of the Navy’s December 6, 2016 response to the Senator’s inquiry. As a result, JWE thought he was paying you to prepare an appeal to the FSSB, even though that procedure was not available to him.

You also paid \$4,100 to the medical expert, who has not been fully compensated and is sending invoices directly to JWE.

Rule 1.5 – Fees

Rule 1.5(a) states that “[a] lawyer’s fee shall be reasonable.”

We find that you charged an unreasonable fee. You charged your client \$400/hour, in increments of .10 hours (six minutes), for a total \$8,400 (twenty hours) to prepare an appeal of his removal from flight duty, when such an appeal was not possible. The monthly invoices you sent to the client indicate that the bulk of this time was for telephone calls and e-mails, and little or none for legal research or drafting of documents that might be useful in an appeal. If you had spent more researching the matter, you would have learned earlier that the advice you gave to your client was incorrect, and you could have provided correct advice sooner thereby allowing your client to make better decisions regarding the objectives of the representation.

Conclusion

In issuing this informal admonition, we have taken into consideration that you have cooperated during the investigation, that you have agreed to pay the expert's outstanding fees, and that you have accepted responsibility for your actions by accepting this informal admonition.

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 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 Rule 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 D.C. Bar Rule 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,

Hamilton P. Fox, III
Disciplinary Counsel

cc: JWE

Enclosure: Attachment to Letter of Informal Admonition

HPF:JNB:ipm