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November 19, 2019

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VIA FIRST-CLASS REGULAR
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Charles Gregory Canty, Esquire
Law Office of Charles Canty
1025 Connecticut Avenue, N.W.
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In re Charles Gregory Canty, Esquire
D.C. Bar No. 443186
Disciplinary Docket No. 2018-D004

Dear Mr. Canty:

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 District of Columbia Court of Appeals Rules Governing the Bar (D.C. Bar R.) XI, §§ 3, 6, and 8.

We docketed this matter based on a disciplinary complaint filed by Robert King, in which he stated, *inter alia*, that you agreed to take his defamation case on a contingency basis in which you would deduct costs after any recovery, but later changed the terms of the representation to require him to split costs up front. You deny breaching any ethical obligation to Mr. King and state that he was always aware that he needed to split the costs of litigation with you as the litigation progressed, not after any recovery. We focus our analysis only on this aspect of Mr. King's allegations, as we do not find clear and convincing of the rest. We also address specific problematic language in your retainer agreement.

The pertinent language in your retainer agreement is:

> **COSTS AND OTHER EXPENSES**
> Client is responsible for all necessary filing fees. Client further agrees that in addition to the above attorneys' fees, all court costs, subpoena costs, photos, depositions, court reporter costs, reports,

> witness statements, records fees and all other out-of-pocket expenses directly incurred in investigating or litigating this claim shall be paid by the undersigned Client(s), and ***that said expenses and attorneys' fees will be deducted from the proceeds of any recovery.*** Attorney has the sole discretion of waiving any or all of these costs and expenses. Attorney expressly retains the right to terminate this agreement if in his opinion the case does not merit further litigation beyond the court's scheduling order. Client may be released from this agreement if attorney does not perform his duties with due diligence. ***If attorney is terminated without violation of his contracted duties, client will be assessed an hourly rate of $300[] for each hour and portion thereof for attorney services performed***. [Emphasis added.]

Rule 1.5(b) provides that "[W]hen the lawyer has not regularly represented the client, the basis or rate of the fee, the scope of the lawyer's representation, ***and the expenses for which the client will be responsible shall be communicated to the client, in writing***, before or within a reasonable time after commencing the representation." (Emphasis added.) **Rule 1.5(c)** provides that a contingent fee agreement must be in writing and state how the fee is to be determined, including "***whether such expenses are to be deducted before or after the contingent fee is calculated, and whether the client will be liable for expenses regardless of the outcome of the matter***. . . ." (Emphasis added.) You state that Mr. King was aware that he had to pay half the litigation costs *during* litigation, not all of the costs afterward from any recovery; but the documents you provided show that you did not modify your retainer agreement to reflect your expectation. Although you believe your oral communications to your client about the fee arrangement was sufficient to put him on notice that you expected him to bear certain costs in a manner *not reflected* in the retainer agreement, Mr. King now points to that agreement's language, claiming that you did not deal with him in good faith after he paid you several-thousand dollars up front. Because your contract failed to state that your client was responsible for half the litigations costs during the litigation, it violated Rules 1.5(b) and (c).

Further, your retainer provided that Mr. King could not discharge you without paying $300 *hourly* for services you had provided in a *contingency* case. However, you concede you did not have a formal method to record your time, rather "would sometimes write in the margins of [your] notes or sometimes [you] would in [your] notes document the time spent." You failed to keep your time with the detail necessary to recover under any hourly retainer agreement. If you had wanted to collect a fee in Mr. King's case, you had no objective basis to calculate your time.

Moreover, when an attorney is discharged before any recovery and has provided a contingent-fee client some value in the case – but less than substantial performance – *quantum meruit* is the traditional method to recover fees. *In re Waller*, 524 A.2d 748, 750-51 (D.C. 1987) ("[U]nless the attorney has performed valuable services contributing to the benefit finally obtained by the client, he has not 'substantially performed' [in order to collect the full contingency fee], and

is only entitled to *quantum meruit* recovery."), citing *Kaushiva v. Hutter*, 454 A.2d 1373, 1374 (D.C. 1983), *cert. denied*, 464 U.S. 820. *Quantum meruit* is a claim in equity, rather than adjudication of a contract breach in law. It does not necessarily reflect the hours spent on the client's matter, but assesses the value provided in advancing the case – an evaluation that weighs a number of additional factors. *See Ginberg v. Tauber*, 678 A.2d 543, 551-52 (D.C. 1996) (in determining appropriate amount of attorney's fees, including pursuant to *quantum meruit*, relevant court considers multiple factors, whether using lodestar or other method).

Your mixed contingency/hourly retainer agreement reserved the option to collect a fee if your client chose to discharge you—even if he never obtained a recovery—and eliminated the shared risk inherent in a contingency fee agreement, guaranteeing your fee whether Mr. King won or lost. Moreover, the hourly rate calculation was not capped in any way depending on the amount of the actual recovery. If the recovery were disappointing, or if there were no recovery at all, Mr. King could have ended up owing you and unreasonably high percentage of his recovery or even more than he recovered. Thus, it could have served as serious deterrent to his changing counsel, even though he had an absolute right to do so. Furthermore, Mr. King would have had no way of assessing his exposure under the hourly-rate alternative, unless you gave him some idea of how many hours you had spent on his case. While Disciplinary Counsel is not contending that under no circumstances may a lawyer in a contingency case provide in his fee agreement that he is to be paid his hourly rate if he is discharged without cause, such a provision would have to be qualified in some fashion so that it did not serve as a barrier to a client exercising his right to discharge his lawyer.

Under the circumstances of this case, your retainer agreement penalized Mr. King if he chose to discharge you. "Preserving the client's unfettered right to discharge an attorney protects the fiduciary relationship between lawyer and client." *In re Mance*, 980 A.2d 1196, 1203-04 (D.C. 2009), as amended (Oct. 29, 2009) (citation omitted). Thus, "[a] fee arrangement that substantially alters and economically chills the client's unbridled prerogative to walk away from the lawyer strikes at the core of the fiduciary relationship." *Id.* at 1204 (internal punctuation and alterations omitted). "To answer that the client can technically still terminate misses the reality of the economic coercion that pervades such matters." *Id.* You report that you never charged Mr. King for your time and have agreed to modify the language of your retainer agreement.

This letter constitutes an Informal Admonition and is the most lenient form of public discipline available. We have determined an Informal Admonition is appropriate rather than instituting formal proceedings because you have agreed (1) to accept it and (2) to meet with Daniel Mills, Esquire, of the D.C. Bar's Practice Management Advisory Service to conduct a review of your retainer agreement to correct its deficiencies ***within 60 days of the date of this letter***. ***You agree to waive confidentiality, including under Rules 1.6(i) and (j), regarding the PMAS review in connection with this and any future disciplinary matter***. Mr. Mills will notify Disciplinary Counsel in writing when he deems you have completed the process and will provide Disciplinary

Counsel a written report of the consultation(s), advice, follow-up, and all memorialization of your engagement with PMAS.

Disciplinary Counsel believes that the lack of actual harm to your client, combined with the forthcoming changes to your retainer agreement, sufficiently discharge the disciplinary system's obligations to protect the integrity of the courts and the consuming public, and to deter similar misconduct by you or other practitioners.

Pursuant to D.C. Bar R. XI, §§ 3, 6, and 8, this Informal Admonition is public when issued. Attached to this Informal Admonition is 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 a formal hearing, you must submit a written request 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 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(c). The case will then be assigned to a hearing committee, and a hearing will be scheduled by the Board on Professional Responsibility. D.C. Bar R. XI, § 8(d). 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.

Very truly yours,

Hamilton P. Fox, III
Disciplinary Counsel

Encl.: Attachment to Letter of Informal Admonition

cc: Robert King

Daniel M. Mills
Practice Management Advisory Service, District of Columbia Bar

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