OFFICE OF DISCIPLINARY COUNSEL

May 11, 2021

Via Email Only

Michael E. Lawlor, Esquire
c/o William Brennan, Esquire

at
wbrennan@brennanmckenna.com

Re: In re Lawlor
Disciplinary Docket No. 2018-D056
D.C. Bar Membership No. 459767

Dear Mr. Lawlor:

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.

This investigation was docketed based on a complaint alleging that you engaged in misconduct while representing a client in post-conviction proceedings.

We find as follows: In October 2000, after two trials, Mr. H while represented by other counsel was convicted of conspiracy to possess heroin with intent to distribute and sentenced to life in prison without the possibility of parole. Mr. H was ultimately sentenced to that term of imprisonment on three separate occasions by the same United States District Court Judge. After several appeals, the conviction was ultimately affirmed, creating a statutory deadline of March 22, 2011 for Mr. H to file a motion to vacate his conviction and/or life sentence under 28 U.S.C. § 2255.

In September 2010, Mr. H emailed you about filing a § 2255 motion on his behalf. In January 2011, you agreed by email to represent Mr. H for a total fee of $35,000. Given the amount of work required, and the jurisdictional deadline quickly approaching, you emailed Ms. K, an experienced Maryland

lawyer well versed in 2255 litigation, asking if she was interested in working on the case with you. You had worked with Ms. K before. Ms. K agreed to assist you with the preparation of the § 2255 petition, including drafting the Memorandum of Law supporting the petition. You never advised Mr. H of your arrangement with Ms. K.

Between January and March 2011, Ms. K and you reviewed the voluminous transcripts and identified issues to raise in the motion. On March 22, 2011, you timely filed a motion to vacate Mr. H's sentence under 28 U.S.C. § 2255. The motion enumerated several claims for relief but did not include factual or legal arguments. You intended to include such arguments in a separate memorandum of law.

Ms. K continued to work on the case with the expectation that she would draft a memorandum of law. She could not do so, however, until you investigated certain aspects of Mr. H's claims, which you had agreed to do.

Over the course of several years, you sought numerous extensions of time to file the memorandum of law, but never did so. Throughout this period, Ms. K reminded you that she could not complete the memorandum of law until you conducted an investigation. Eventually, you stopped filing extensions for time, but the motion remained pending and Mr. H's case was not prejudiced by your failure to do so.

In early 2015, you began to negotiate with the Department of Justice for a reduction in Mr. H's sentence based on new sentencing guidelines. You were successful in receiving a written offer to dismiss Mr. H's §2255 Petition in exchange for a reduction in sentence. Notwithstanding the Government's offer, you petitioned them for a further reduction in sentence.

Around the same time, you began to coordinate with another attorney who had been appointed as part of the Obama Clemency Initiative to represent Mr. H on a petition for clemency. During that time, you were successful in keeping the Government's settlement offer open while Mr. H awaited the decision on his clemency petition. On January 17, 2017, President Obama granted clemency to Mr. H and he was released thereafter.

From 2011 to 2017, Mr. H consistently expressed to you his desire that his case be resolved as soon as possible. Throughout this period, you often failed to respond to emails and phone calls in a timely fashion and failed to schedule phone calls with Mr. H after committing to do so. You frequently told Mr. H that your filing of the memorandum of law was delayed because of circumstances such as trials and personal issues but continued to assure Mr. H that you would make the filing in the near future. Although you told Mr. H you would visit him in prison, you never did so.

We find that you violated Rule 1.3(a), in that you failed to represent Mr. H zealously and diligently within the bounds of law; Rule 1.3(b)(1) in that you intentionally failed to seek the lawful objectives of a client through reasonably available means permitted by law and the disciplinary rules;[1] and Rule 1.3(c) in that you failed to act with reasonable promptness in representing Mr. H. You have argued that you did not neglect Mr. H's case but made a conscious strategic decision to "slow walk" the matter in order to develop the strongest possible case and explore all possible remedies for Mr. H including new issues that may arise in the future. While that strategy may be legitimate under certain circumstances, we do not agree with that characterization of this case. The record shows that Ms. K repeatedly asked you to investigate Mr. H's claims and you assured her that you would. On multiple occasions you told Ms. K that you needed to begin working on the case again and expressed a desire to advance the case. You also repeatedly told Mr. H that you would be filing the motion imminently. You never suggested to either Ms. K or Mr. H that you were delaying the case for strategic reasons. The evidence shows that you were not "slow walking" the case but rather procrastinating in violation of your ethical duties.

We also find that you violated Rule 1.4(a) in that you failed to keep Mr. H reasonably informed about the status of his matter and promptly comply with reasonable requests for information. You have acknowledged that you were deficient in communicating with Mr. H and should have been more responsive to his frequent requests for information.

Finally, we find that you violated Rule 1.5(e) in that you divided the fee paid by Mr. H with a lawyer who was not in your firm without advising Mr. H, in writing, of the identity of the lawyer who was to participate in the representation, the contemplated division of responsibility, and the effect of the association or obtain Mr. H's informed consent to the arrangement. You have argued that your hiring of Ms. K did not violate Rule 1.5(e) because Ms. K was a "temporary lawyer" as contemplated in D.C. Ethics Opinion 284. That Opinion suggests that Rule 1.5(e) may not apply in cases where an outside lawyer is hired for a limited period of time to work on a specific case. Assuming *arguendo* that Ethics Opinion 284 applies to this case and Ms. K qualified as a "temporary lawyer", the Opinion makes clear that "a lawyer should advise and obtain consent from the client whenever the proposed use of a temporary lawyer to perform work on the client's matter appears reasonably likely to be material to the representation or to affect the client's reasonable expectations." Ms. K's role, including drafting the Memorandum of Law, was material to the representation and Mr. H reasonably would have expected Ms. K's identity to be disclosed, rendering disclosure and consent mandatory under Rule 1.5(e).

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[1] "Rule 1.3(b) does not require proof of intent in the usual sense of the word. Rather, neglect ripens into an intentional violation when the lawyer is aware of his neglect of the client matter, or, put differently, when a lawyer's inaction coexists with an awareness of his obligations to his client." *In re Ukwu*, 926 A.2d 1106, 1116 (D.C. 2007) (internal citations and quotation marks omitted).

In deciding to issue this letter of Informal Admonition rather than institute formal disciplinary charges against you, we have taken into consideration that you took this matter seriously, cooperated with our investigation, have no record of prior disciplinary actions and have accepted responsibility for your misconduct, including by accepting this Informal Admonition. We also recognize the complexity of this case, and your experience in representing clients in post-conviction matters, including in capital and *pro bono* cases spanning more than twenty years. You also entered into an agreement with Mr. H to refund $13,500 of the legal fees for your representation, of which you have already paid $6,750. We reserve the right to reopen this case if you fail to make the remaining agreed-upon payment. Finally, you have informed Disciplinary Counsel that you are now a partner of a new law firm in which you have much more administrative support and staff. We find that the likelihood that similar violations would occur in the future are low.

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. An Informal Admonition is the most lenient form of public discipline available. 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 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
Disciplinary Counsel

Encl.: Attachment to Letter of Informal Admonition

HPF:HRD:eaf