

**THE FOLLOWING INFORMAL ADMONITION WAS ISSUED ON  
MAY 3, 2001 BY BAR COUNSEL**

Douglas B. Evans, Esquire  
9224 Edwards Way  
Suite 3449  
Adelphi, Maryland 20783

Re: Evans/Kitt  
Bar Docket Number 404-00

Dear Mr. Evans:

This office has completed its investigation of the above-referenced matter. Because your conduct reflected a disregard of certain ethical standards under the District of Columbia Rules of Professional Conduct (the "Rules"), we are issuing you this Informal Admonition pursuant to Rule XI, § § 3, 6, and 8 of the District of Columbia Court of Appeals' Rules Governing the Bar.

This matter was docketed for investigation on December 13, 2000, after a preliminary investigation was conducted, based upon a complaint from Mr. Denon Kitt. Your client, Denon Kitt, states that you failed to communicate adequately with him, failed to obtain and use trial transcripts, and appeared unconcerned about his case.

Mr. Kitt's mother corroborates his statements. She states that you were paid a \$9,300 retainer in April 1998. On May 31, 2000, Mr. Kitt's grandmother requested an accounting, which you have not provided. On June 13, 2000, Mr. Kitt's mother states that she called the District of Columbia Court of Appeals (the "Court") and ascertained that the Court ordered you to file missing transcripts for the record. When she called the Records Office to determine the status of the transcripts, she was told that the transcripts were complete. On June 15, 2000, Ms. Kitt states that she called both the Court and the Records Office and was told that you had not requested or picked up any transcripts. She questions whether you filed your appellate brief without the transcripts and whether you failed to interview defense witnesses helpful to Mr. Kitt. Mr. Kitt's mother states that you have not visited Mr. Kitt in prison and that Mr. Kitt has received no legal mail from you while he has been at Sussex II State Prison. Mr. Kitt confirms that he never received mail from you while he has been incarcerated.

On January 5, 2001, you responded to the allegations of misconduct. You deny that you failed to maintain contact with Mr. Kitt and refer to three letters dated July 15 and 20, and August 18, 2000, written to him concerning the status of his case, and a fourth letter addressing a separate issue. You further state that you are in the process of determining the number of hours that you worked on Mr. Kitt's case. On December 5, 2000, you provided a copy of a motion to withdraw as counsel, which you state was filed on December 6, 2000.

On January 9, 2001, this office requested a copy of the writing required by Rule 1.5(b) and information as to what action you took in response to Mr. Kitt's letter of October 20, 2000, terminating your services and requesting an accounting and a refund. On January 18, 2001, you responded that a retainer agreement exists, but that you cannot locate it and that you did not receive the October 20<sup>th</sup> letter from Mr. Kitt. You state that if you had received this letter, you would have immediately filed a motion to withdraw.

On February 5, 2001, you responded to our request to submit a further response and enclosed a copy of the Court's January 30, 2001, order granting your motion to withdraw as counsel. On February 6 and 14, 2001, you submitted additional responses. You maintain that you communicated with Mr. Kitt and that you also had frequent contact with his family. You state that Mr. Kitt and his family know your home telephone number and that Mr. Kitt was encouraged to call you collect if he had questions about his case. You state that you had frequent telephonic contact with Mr. Kitt's mother, but that Mr. Kitt seldom called.

You state that you thoroughly investigated Mr. Kitt's case and that as a result of this investigation and confidentiality concerns, you concluded that you could not maintain contact with Mr. Kitt's mother and thereafter, directed later status reports to Mr. Kitt. You refer to the letters mentioned in your January 5<sup>th</sup> response as evidence of your communication with Mr. Kitt. You state that you continue to attempt to determine the number of hours you worked on the case and you are searching for the retainer agreement. You state that Mr. Kitt agreed to pay you \$10,000 to represent him at sentencing and on appeal and that you agreed to pay \$700 for investigation costs. You claim that your \$200 hourly rate was noted in the retainer agreement.

On February 21, 2001, Bar Counsel subpoenaed your client file in this matter, which was received on March 2, 2001.

We find as follows. On July 2, 1998, you filed the notice of appeal. On November 6, the Court received the record on appeal; and on August 12, 1999, the Court ordered additional transcripts filed within fifteen days of the order. On August 26, 1999, you informed the Court that you needed more time to acquire transcripts. On March 22, 2000, the Court ordered you to advise the court which transcripts remained outstanding; and on April 11, 2000, you responded and requested until June 12, 2000 to provide the complete record. On July 19, 2000, the Court ordered the brief filed within forty days of date of the order. On September 12, 2000, you filed a motion to extend the time to file the brief, which the Court granted on October 19, 2000. On December 6, 2000, you filed a motion to withdraw as counsel.

We find that you violated Rule 1.5(b), which provides: "When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation." In your client file, there is no writing that conforms to the requirements of this Rule. While we understand your position that

such a writing once existed, you have not located it; and both Mr. and Ms. Kitt deny that you provided such a writing. In the absence of a copy of the writing and in light of Mr. and Ms. Kitt's assertions, we find a violation of Rule 1.5(b).

We further find that you violated Rule 1.4(a), which provides: "A lawyer shall promptly comply with reasonable requests for information." Mr. Kitt, through his mother and grandmother, has requested an accounting of funds since May 31, 2000. To date, you have not provided one. You do not deny that their request is reasonable. Yet, you have failed to respond. Rule 1.16(d) requires an attorney, upon termination of his services, to "take timely steps . . . to protect a client's interests, such as . . . refunding any advance payment of fee that has not been earned." Because you have failed to provide an accounting, it is not clear whether the entire fee has been earned or whether the Kitts are entitled to a refund.

We do not find that you committed a further violation of Rule 1.4 by failing to communicate with Mr. Kitt concerning his matter. Your client file includes copies of letters from you to Mr. Kitt, as well as letters from Mr. Kitt to you. Although Mr. Kitt denies receiving your letters, they were not returned in the mail and at least one of Mr. Kitt's letters appears to be a response to one of your letters. Your letters discuss various issues involved in the case, including the results of meetings with witnesses and case strategy. Mr. Kitt's mother complains that you did not maintain contact with Mr. Kitt's family. However, we recognize that your obligation to communicate is with your client, Mr. Kitt. The aforementioned letters appear to satisfy the duty imposed by Rule 1.4 (a) to keep a client "reasonably informed" about the status of a case.

We do not find that you failed to withdraw contrary to Mr. Kitt's request to do so. We have insufficient evidence to prove that you received the October 20<sup>th</sup> letter but failed to act on it. You did not move to withdraw until December 6, 2000, after you received an inquiry from our office concerning Mr. Kitt's complaint. The Court granted your motion, on January 30, 2001. We cannot say that the delay was intentional given your assertion, which we cannot disprove, that you did not know of Mr. Kitt's earlier request.

Upon review of your client file, we find insufficient evidence to support the allegation that you failed to investigate Mr. Kitt's case. Your file shows investigative efforts. We have insufficient evidence to prove that the delay in obtaining all of the transcripts constitutes an ethical violation. On September 12, 2000, you represented to the Court that you ordered the transcripts but because of "some confusion" you never received them. On October 19, 2000, the Court ordered you to file the brief within 40 days from the filing of the transcript. In its January 30, 2001, order removing you as counsel, the Court states that the record had been filed and that successor counsel should file a brief within 40 days of the date of the order.

This letter constitutes an Informal Admonition pursuant to Rule XI, §§ 3, 6, and 8 of the Rules of the District of Columbia Court of Appeals Governing the Bar. Please refer to the

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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. 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.

This Informal Admonition will become public 14 days from the above date, if you do not request a hearing. If you wish to have a formal hearing, you must submit a request in writing to the Office of Bar Counsel, 515 Fifth Street, NW, Building A, Room 127, Washington, DC 20001, with a copy to the Board on Professional Responsibility, within 14 days of the date of this letter, unless Bar Counsel grants an extension.

Sincerely,

/s/

Joyce E. Peters  
Bar Counsel