THE FOLLOWING INFORMAL ADMONITION WAS ISSUED
BY BAR COUNSEL ON
December 29, 2005

BY FIRST-CLASS AND CERTIFIED
MAIL NO. 7160 3901 9849 0189 5594

Jacqueline J. Moore, Esquire
c/o W. Alton Lewis, Esquire
1450 Mercantile Lane
Suite 155
Largo, Maryland 20774

Re: *In re Jacqueline J. Moore, Esquire*
(D.C. Bar No. 228908)
Bar Docket No. 2003-D342

Dear Ms. Moore:

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.

This matter was docketed for investigation following Bar Counsel's review of an article that appeared in *The Washington Post* calling into question the manner in which you served as the court-appointed fiduciary for Mr. Clarence Culbertson, an adult ward of the Probate Division of the Superior Court (the "Probate Court").

In your response to our notice of investigation, you advised that (1) you had filed a Final Conservatorship Report along with an Account; (2) the scheduled summary hearing initiated by the Probate Court was never held; and (3) your final Account was approved. You provided copies of several documents for our review.

On July 13, 2003, we requested further information from you regarding a memorandum issued by the Probate Clerk's office in April 2000, wherein it was reported that you had not filed the final conservatorship account nor offered an explanation for your failures to handle matters regarding the ward's estate in a timely manner. In your response to our inquiry, you explained that you had been ill in November 1998 when you had surgery, that you were away from your practice recuperating over the next three months, and that, prior to your surgery, your computer crashed with the loss of necessary information on your hard drive.

By letter dated January 27, 2005, you advised that you had been appointed conservator in August 1995, that from August 1995 to November 2000, when you were allow to resign your position, an annual accounting was required to be filed with the Probate Court, and while the November 2000 order mentioned a final account, the Probate Court failed to specify when your final account had to be filed. You further advised that in February 2001 you transferred the ward's assets to Kenneth Rosenau, Esquire, your successor, after he was bonded. You further advised that your first through sixth accounts were filed on April 16, 200l, with your final account filed on September 21, 200l. Your final account was approved on March 4, 2002.

During our investigation of this matter, we reviewed the records of the Probate Court beginning in August 1995 after your appointment in Intvp. No. 44-89 to serve as successor conservator for Mr. Culbertson.

The Probate Court's docket sheet indicates that on April 4, 2000, the court clerk sent you a delinquency notice regarding your need to file an inventory and the first through fourth accounts in the ward's matter. In that notice, you were directed to "file the accounts and conservatorship reports on or before April 21, 2000, so as to avoid a referral to the presiding Fiduciary Judge." On May 19, 2000, because nothing had been filed, the Probate Court appointed a guardian *ad litem* and directed him to investigate your conduct.

In his report dated June 28, 2000, the guardian *ad litem* indicated among other things, that you "ha[d] not filed [your] original inventory nor any accountings since [your] appointment in 1995 nor ha[d you] responded to the April 4, 2000, Notice of the Court concerning these obligations." A show cause hearing was scheduled for August 31, 2000.

On August 31, you filed a response to the show cause order and advised the Probate Court that you had "prepared for filing all of the reports and Accounts due this Court along with documentation supporting the transactions. The accounts were not filed in a timely fashion due to several reasons," chiefly, the crash of your computer system and your contemporaneous illness and post-surgery recovery.

The Probate Court held a hearing on August 31, 2000, when it heard from the guardian *ad litem* and from you. During the hearing, you moved to withdraw as court-appointed fiduciary. In early November 2000, the Probate Court issued an order finding that "no formal conservatorship was necessary in the future," that it would "appoint a different member of the bar to serve as Successor Guardian," that your "oral motion for leave to resign is granted," and that "the conservatorship will terminate upon approval of

[your] Final Account herein." Subsequently, in December 2000, Mr. Rosenau was appointed to serve as successor guardian for Mr. Culbertson. In fact, you transferred funds to him on February 16, 2001.

Pursuant to SCR-PD 330(a)(2), a final account is due "within 60 days of resignation or removal" of the fiduciary. In March 2001, the Clerk of the Probate Division issued a notice that you had failed to "file[] the Final Conservatorship Account" and had not "furnished a satisfactory explanation for the delinquency in the administration of this estate." At the same time, the Clerk notified you of a summary hearing in the matter to be held April 17, 200l. You then filed a pleading with the Probate Court to advise, among other things, that your final account had been delayed because your successor did not qualify as a fiduciary in a timely manner.

The Probate Court's docket sheet indicates that, on April 16, 2001, you finally filed an inventory and the annual accountings covering the six years you served as conservator.

A second show cause hearing was held on June 25, 2001, which addressed additional and substantial assets of the ward that remained in your control as special trustee; additionally, you moved to withdraw as trustee and the Probate Court appointed Mr. Rosenau to also serve as successor trustee in your stead. On August 13, 2001, the Probate Court issued a written order directing you to file your final account within 30 days. On September 21, 2001, you filed a final account, indicating that you had $34,604 under your control. In its August 2001 order, the Probate Court found no fault for retaining control of these additional funds following your resignation as conservator because you continued serving as a special trustee for other funds of the ward.

Based on our review of the Probate Court's records from August 1995 to September 2001, we find that your conduct violated the ethical rules.

1. Rule 1.3(a) provides:

(a) A lawyer shall represent a client zealously and diligently within the bounds of the law.

Rule 1.3(c) provides:

(c) A lawyer shall act with reasonable promptness in representing a client.

In August 1995, you were appointed by the Probate Court to serve as a conservator for Mr. Culbertson, a ward of the court. While you were not retained to represent Mr. Culbertson, and only served as a court-appointed fiduciary (*see* D.C. Code § 21-2063), various disciplinary rules still applied to your conduct. *In re Burton*, 472 A.2d 831 (D.C. 1984) (former DR 9-103(A) applied to court-appointed fiduciary's handling of entrusted funds even though he had no client).

Given your appointment as a conservator in August 1995, an inventory had to be filed in November 1995, with annual accounts needing to be filed in August 1996, 1997, and 1998. You suggest that you were unable to file the required annual accounts because of a computer crash and your health problems. In your letter of July 23, 2004, you indicated that you became ill and needed surgery in November 1998, which necessitated your being away from your practice for "approximately three months." You also advised that before your illness, you experienced computer problems when your hard drive crashed. Because the hard drive could not be repaired, you purchased a new computer.

While your health affected your ability to file the required inventory and annual accounts in 1998 when you became ill and your computer malfunctioned, these issues do not provide an explanation for your earlier neglect. We conclude that your continued failure to prepare and file an inventory within 60 days of your August 1995 appointment, and at least four annual accountings on a yearly basis thereafter, violated Rules 1.3(a) and 1.3(c).

2. Rule 1.16(d) requires a lawyer, upon termination of representation, to "take timely steps to the extent reasonably practicable to protect a client's interest, such as . . . surrendering all papers and property to which the client is entitled," and by filing (timely) your final account with the Probate Court as required by statute and court rule. Here, you were permitted to resign in November 2000, and the court's order specifically reminded you of your need to file a final account. When nothing was filed by March 1, 2001, the Probate Clerk sent you a memorandum noting your failure and setting the matter down for hearing on April 17, 2001. After a show cause hearing in June 2001, you filed your final account in September 2001. The final account was then approved. We find a violation of Rule 1.16(d).

3. Rule 8.4(d) states that a lawyer shall not engage in conduct that seriously interferes with the administration of justice. In 1996, one year after your appointment, the

Court found that a lawyer could violate this rule if her conduct

> meet[s] the following criteria. First, . . . the conduct must be improper. . . . [T]he attorney must either take improper action or fail to take action when, under the circumstances, . . . she should act. . . . This conduct may be improper, for example, because it violates a specific statue, court rule or procedure . . . . Second, . . . the conduct itself must bear directly upon the judicial process . . . . This of course will very likely be the case where the attorney is acting either as an attorney or in a capacity ordinarily associated with the practice of law. . . . And third, the attorney's conduct must taint the judicial process in more than a *de minimis* way; that is, at least potentially impact upon the process to a serious and adverse degree.

In re Hopkins, 677 A.2d 55, 60-61 (D.C. 1996) (citations omitted). The Court in *In re L.R.*, 640 A.2d 697 (D.C. 1994), found that the lawyer violated the predecessor rule, DR 1-102(A)(5), when he failed to comply with a statutory requirement, and ultimately imposed on the lawyer an informal admonition. Here, you failed to file regular accounts with the Probate Court as required by statute, thereby violating Rule 8.4(d).

In deciding to issue this informal admonition, we note that you have practiced law without incident since 1976, you have no prior record of misconduct, that, unlike Ms. Jones, you were able to account fully for your handling of the ward's assets, and you were ill for several months in late 1998 and early 1999. In addition, you cooperated with this office during its investigation and appeared to candidly acknowledge your shortcomings which did not harm the ward but did frustrate the Probate Court's oversight of your service as conservator from 1995 to 2001.

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 Bar Counsel, with a copy to the Board on Professional Responsibility, within 14 days of the date of this letter, unless Bar Counsel grants an extension of time. If a hearing is requested, this Informal Admonition will be vacated, and Bar Counsel will institute formal charges pursuant to D.C. Bar Rule 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 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.

Sincerely,

Wallace E. Shipp, Jr.
Bar Counsel

WES:RTD:cms

Enclosure: Attachment to Letter of Informal Admonition